311-559

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 158.

JOHN H. MENDENHALL, APPELLANT,

vs.

CLARK N. HALL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 12, 1886.

23924

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1 *Bill of Complaint.*

To the hon. the judge of the 5th circuit court of the United States in and for the western district of Louisiana:

John H. Mendenhall, a resident of the town of Delaware and a citizen of the State of Ohio, brings this his bill of complaint against Clark N. Hall and Charles F. Hall, citizens and residents of the State of Louisiana, parish of East Carroll, and your orator complains and says:

1st. That he did, on the 24th day of December, 1875, sell, transfer, and deliver to Clark N. Hall his entire interest, being an undivided one-fourth of a plantation situated in the parish of East Carroll, State of Louisiana, and more particularly described in a certified copy of the act of sale hereto annexed and made a part of this bill.

2nd. The price and consideration of said sale was the sum of five thousand one hundred and twenty-three ($5,123.00) dollars, and in liquidation of which the said Clark N. Hall executed his three promis-ory notes—one for the sum of two thousand ($2,000) dollars, payable on the 1st day of January, 1877, one for the further sum of two thousand dollars, payable on the 1st day of Jan., 1878, and

2 — for the sum of eleven hundred and twenty-three dollars, payable on the 1st day of January, 1879, all of said notes bearing date December 24th, 1875, and drawing interest at the rate of eight per cent. per annum from the date thereof and payable to the order of your orator; all of which fully appears by the notes made a part of this bill and marked "A," "B," and "C."

3rd. Your orator further shows that at the time of said sale and transfer the said Clark N. Hall, in order to secure the payment of said notes at the respective maturity of each, together with the accrued interest thereon, specially mortgaged and hypothecated the said property to your orator or any future owner or holder of said notes; that said notes were paraphed by the notary "*ne varietur*" to identify them with said act of mortgage, which is also made a part of this bill.

4th. Your orator shows that on the 10th day of February, 1876, the "Concord" plantation, the one-fourth of which your orator had sold to said Clark N. Hall, as above set forth, was partitioned by and between said C. N. Hall and the other co-owners thereof, which fully appears by reference to the act of partition filed herewith and marked.

5th. That the legal effect of said partition is to transfer to

3 the portion of said plantation acquired by said C. N. Hall the aforesaid mortgage and vendor's privilege to secure the payment of the purchase price.

6th. Your orator shows that he is the owner and holder of said notes; that he has received thirteen hundred and forty & $\frac{52}{100}$ dollars as a payment on said notes, and no more, which said amount is credited *pro rata* on said notes and which paid the interest thereon up to 1st of January, 1879.

7th. That the whole amount of the said notes, to wit, $5,123.00, together with the accrued interest thereon from the 1st day of Jan., 1879, is due and unpaid.

8th. Now, your orator complains and says that the said Clark N. Hall had delay and indulgence from your orator from time to time and from year to year; that he visited your orator at his home, in Delaware, Ohio, about the first of the year 1882 and then and there promised your orator that he would, on his return home, make a payment on said notes of fifteen hundred dollars.

9th. That after his return the said C. N. Hall and his brother, Charles F. Hall, entered into a fraudulent scheme and device to defraud your orator and confederated together for that purpose.

10th. That instead of sending to your orator the fifteen
4 hundred dollars, as agreed on, he and his brother Charles wrote to your orator that it was impossible for them to do so and cultivate the plantation, but that if he would extend to said Clark N. Hall time until the fall of the year 1882 that they would pay him on his debt twenty-five hundred dollars, which said letters are made a part of this bill.

11th. Your orator avers that said letters were fraudulent devices to obtain further time, and had the effect of extending the time asked for; that he had the utmost confidence in their honesty and integrity and yielded to their entreaties for further time.

12th. Your orator complains and says that although the said Clark N. Hall agreed not to encumber said property to the prejudice of your orator or said act of mortgage in his favor, yet he fraudulently failed to pay the taxes thereon for the years 1877 and 1878.

13th. He, said Clark N. Hall, told your orator he had paid all the taxes due on said property.

14th. He avers that the said Charles F. Hall knew that said taxes were not paid; that they knew that under the statutes of the State of Louisiana, act No. 38 of 1882, that the sheriff and *ex officio* tax-collector of the parish of East Carroll, the parish in which said
5 property is situated, was bound to sell said property for taxes within four months from the promulgation of said act, unless said taxes were paid.

15th. That said C. N. & C. F. Hall knew at the time that said taxes were not paid and that said property would be sold for taxes, and that they fraudulently failed to pay same in order that a sale of the property by said sheriff for said taxes would be made.

16th. That it was agreed between them that, in order to defeat the rights of your orator on said property, Charles F. Hall would become the purchaser at said tax sale and take title in his own name, hoping and intending thereby to procure the release of said property from your orator's mortgage and privilege, and that his recourse thereon would be lost.

17th. That said sheriff and tax-collector did advertise and sell said property and the said Charles F. Hall became the purchaser thereof, as will appear by the tax-collector's deed hereto annexed and made a part of this bill.

18th. That although Charles F. Hall pretends to have bought

said property and claims to be the owner thereof, yet Clark N. Hall is still living thereon and cultivating the plantation as before, which is itself an evidence of fraud and simulation.

19th. Your orator avers that said sale is null and void and
6 conveys no title to the purchaser for the following reasons, to wit:

1st. That for the fraudulent confederation and collusion of the said Clark N. Hall and said Charles F. Hall, and of their collusive and fraudulent devices thereafter, and of the false statements of said C. N. Hall to your orator that the taxes had been paid, and of their fraudulent and false acts and statements hereinbefore set forth by which your orator had been deceived and thrown off his guard, it would be wrong, unjust, and inequitable to permit them to take and hold the advantage of their own wrong.

2nd. That the sale of the property by the tax-collector is null and void and conveys no title to the purchaser for the reason: 1st. The property has never been legally assessed, there being no proper description thereof, the statutes of the State of Louisiana requiring that the property must be described with such particularity as to leave no doubt of its identity. 2nd. The advertisement gave no sufficient description of the property to be sold. 3rd. That it was offered for sale on the 1st day of Jan., 1883, a *dies non* in the State of Louisiana. 4th. That it could not legally be reoffered for sale until it had been legally offered in the first instance; the terms
7 and conditions of said first and second offering are different under section 4 of act No. 98 of 1882, the law under which said property was sold.

20th. Your orator further shows that said Charles F. Hall cannot claim any benefit from the tax sale aforesaid for the reason that he himself is personally bound for the payment of the purchase price of the property, having been, as your orator is informed and believes, interested in the purchase and having personally bound himself to your orator to pay the sum of twenty-five hundred dollars if he would grant an extension to Clark N. Hall until the 1st of Jan., 1883.

In consideration whereof and forasmuch as your orator can have adequate relief in this hon. court, where matters of this nature are properly cognizable and returnable—

Your orator prays that the sale by the tax-collector of the parish of East Carroll of the property described in the act of partition hereto annexed be annulled and set aside and decreed to be of no effect; that your petitioner's mortgage and vendors' privilege thereon to secure the balance due on said notes, together with all the accruing interest and the cost of this proceeding, be recognized and
8 rendered executory, and that said land be seized and sold by due process of law to pay and satisfy the same.

And may it please your honors to grant unto your orator a writ of subpœna of the United States of America, issuing out of and under the seal of this hon. court, directed to Clark N. Hall and Charles F. Hall, of the parish of East Carroll, commanding them, on a day certain to be therein named and under a certain penalty, to be and

appear in this hon. court, then and there to answer to all and singular the premises, but not under oath, which is hereby expressly waived, and to stand to, perform, and abide such further orders, direction, and decree as may be made against them or either of them.

He prays for full, general, and equitable relief.

As your orator is in duty bound, he will ever pray, etc.

BOATNER & BOATNER,
Solicitors.

Endorsed: No. 45. J. H. Mendenhall *vs.* Clark N. Hall *et al.* Bill in equity. Filed Sept. 4th, '83. Wm. Ray, d'y cl'k. Boatner & Boatner, solicitors.

9 *Subpœna in Chancery.*

UNITED STATES OF AMERICA:

Circuit Court, Fifth Circuit and Western District of Louisiana.

The President of the United States to Clark N. Hall, Esqr., and Charles F. Hall, Esqr., Greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America for the western district of Louisiana, in the fifth circuit, in equity, on the first Monday of October, A. D. 1883, in the city of Monroe, to answer to a bill of complaint exhibited against you in the said court by J. H. Mendenhall, a resident of the town of Delaware and a citizen of the State of Ohio, and to do further and receive what the court shall consider in that behalf, and this you are not to omit under penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of Monroe, on this 4th day of September, A. D. 1883, and of the 108th year of the Independence of the United States.

[SEAL.] WM. RAY, *D'y Cl'k.*

10 The defendants are notified that they are to enter appearance in this suit in the clerk's office, at Monroe, La., on or before the day at which the writ is returnable; otherwise the bill may be taken *pro confesso.*

WM. RAY, *D'y Cl'k.*

Endorsed: No. 45. J. H. Mendenhall *vs.* Clark N. Hall *et al.* Subpœna in chancery.

Marshal's Return.

Rec'd this subpœna, with copy thereof, for Clark N. Hall and Charles F. Hall on Sept. 5th, 1883, and on 7th September, 1883, served the copy for Clark N. Hall by handing the same to G. H. Cunningham, a person over the age of 14 years, residing in the house with said Clark N. Hall, the latter being absent from home, said house & residence of Clark N. Hall — situated in East Car-

roll p'h, Louisiana. Served the copy hereof on Charles F. Hall personally at his domicile, in the parish of East Carroll, on the 7th September, 1883.

W. R. LEWIS,
D'y U. S. M.

Filed Oct. 1, '83.

J. W. WHEATON, *Clk.*

11 *Appearance of Def'ts.*

Order Book. Monday, Oct. 1st, 1883.

JOHN H. MENDENHALL
vs.
CLARK N. HALL & CHARLES F. HALL. } In Equity. No. 45.

The defendants, Clark N. Hall and Charles F. Hall, by their solicitor, John T. Ludeling, enter their appearance in the above-entitled case.

Demurrer and Plea of Charles F. Hall.

U. S. Circuit Court in and for the Western District of Louisiana, at Monroe.

J. H. MENDENHALL *vs.* CLARK N. HALL & CHAS. F. HALL.

The demurrer and plea of Chas. F. Hall, one of the defendants named above, to the bill of complaint of the above-named plaintiff.

Demurrer.

I, the defendant, Chas. F. Hall, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill contained to be true in such manner and form as the same are therein set forth and alleged, doth demur and for cause of demurrer showeth that it appears by the said bill that the same is exhibited against defendant and another person therein named as defendant thereto for distinct matters and causes in several, whereof, as
12 appears by the said bill, this defendant is not in any manner interested or concerned, and that the said bill is altogether multifarious.

Wherefore and for divers other good causes of demurrer appearing in said bill I pray the judgement of this honorable court whether I shall be compelled to make any answer to the said bill.

Plea.

And I, the defendant, Chas. F. Hall, not waiving my said demurrer, but wholly relying thereon as to so much of said bill as seeks to have my title to the land described in the bill set aside and decreed null, do plead thereto, and for plea say that by article 210 of the constitution of the State of Louisiana tax titles are declared

to be *prima facie* valid, and that they cannot be set aside without a previous tender to the purchaser of the price paid and ten per cent. per ann. interest thereon shall have been made, which has not been done, nor is it alleged in the bill that it has been done.

All which last-mentioned matters and things I do plead in bar to so much of the bill as is hereinbefore pleaded to, and I humbly pray judgement of this court whether I ought to make any further answer to so much of the bill as is hereinbefore pleaded to.

13 JNO. T. LUDELING,
Solicitor for Chas. F. Hall.

I hereby certify that, in my opinion, the plea is well founded in law.

JNO. T. LUDELING, *Of Counsel.*

Endorsement: No. 45. U. S. C. court, western district of La. J. H. Mendenhall *vs.* Clark N. & Chas. F. Hall. Demurrer and plea of Chas. F. Hall. Filed Nov. 5th, 1883. Wm. Ray, d'y clerk.

Plea of C. N. Hall to Jurisdiction.

U. S. Circuit Court in and for the Western Dist. of Louisiana, at Monroe, La.

J. H. MENDENHALL *vs.* CLARK N. HALL & CHAS. F. HALL.

The plea of Clark N. Hall, one of the defendants, to the bill of complaint of J. H. Mendenhall, plaintiff.

This defendant, by protestation, not confessing or acknowledging the matters and things in and by said bill set forth and alleged to be true in such manner and form as the same are thereby
14 and therein set forth and alleged, for plea to so much and such part of the bill as prays for judgment against him for the amount of the written obligations sued upon saith that a court of chancery or equity is without jurisdiction *ratione materia* to try the issues thus presented on said obligations, which can only be tried by a court of law and by a jury.

All of which matters and things this defendant doth aver to be true, and he pleads to the jurisdiction of this court in bar to the plaintiff's bill, and he prays the judgment of this court whether he should be compelled to make other or further answer to so much of said bill as is hereinbefore pleaded to, and he prays to be hence dismissed with his costs and charges in that behalf most wrongfully sustained.

JNO. T. LUDELING,
Solicitor for Defendant.

I do hereby certify that, in my opinion, the plea is well founded in point of law.

JNO. T. LUDELING, *Counsellor.*

Endorsement: No. 45. U. S. circuit court, western dist. of Louisiana. J. H. Mendenhall *vs.* Clark N. & C. F. Hall. Demur-
15 rer and plea of Chas. F. Hall. Filed Nov. 5th, 1883. Wm. Ray, d'y clerk.

U. S. Circuit Court in and for the Western District of Louisiana, at Monroe.

J. H. MENDENHALL *vs.* CLARK N. HALL & CHAS. F. HALL.

The plea and demurrer of Chas. F. Hall, one of the defendants named above, to the bill of complaint of the above-named plaintiff.

I, the defendant, Chas. F. Hall, by protestation, not confessing or acknowledging all or any of the matters & things in the said bill contained to be true in such manner & form as the same are therein set forth & alleged, doth demur, &, for cause of demurrer, showeth that it appears by said bill that the same is exhibited against defendant & another therein named as defendant thereto for distinct matters & causes, in several whereof, as appears by the said bill, this defendant is not in any manner interested or concerned, & that the said bill is altogether multifarious.

Wherefore & for divers other good causes of demurrer appearing in said bill I pray the judgment of this honorable court whether I shall be compelled to make answer — the said bill.

Plea.

And I, the defendant, Chas. F. Hall, not waiving my said demurrers, but wholly relying thereon as to so much of the said bill as seeks to have my title to the land described in the bill set
16 aside & be declared —, do plead thereto, and for plea say that by article 210 of the constitution of the State of Louisiana tax titles are declared to be *prima facie* valid, & that they cannot be set aside without a previous tender to the purchaser of the price paid and ten per cent. per annum interest thereon shall have been made, which has not been done, nor is it alleged in the bill that it has been done; all of which last-mentioned matters & things I do plead in bar to so much of the bill as is hereinbefore pleaded to, & I humbly pray judgment of this court whether I ought to make any further answer to so much of the bill as is hereinbefore pleaded to.

JNO. T. LUDELING,
Solicitor for Chas. F. Hall.

I do hereby certify that, in my opinion, the plea is well founded in law.

JNO. T. LUDELING,
Of Counsel.

Endorsement: No. 45. U. S. C. court. J. H. Mendenhall *vs.* Clark N. & Chas. F. Hall. Plea of C. N. Hall to the jurisdiction of the court. Filed Nov. 5th, 1883. Wm. Ray, d'y clerk.

U. S. Circuit Court in and for the Western District of Louisiana, at Monroe.

17 J. H. MENDENHALL
vs.
CLARK N. HALL & CHAS. F. HALL.

The plea of Clark N. Hall, one of the defendants, to the bill of complaint of J. H. Mendenhall, plaintiff.

This defendants, by protestation, not confessing or acknowledging the matters and things in and by said bill set forth and alleged to be true in such manner & form as the same are thereby & therein set forth & alleged, for plea to so much & such part of the bill as prays for judgment against him for the amount of the written obligation sued upon saith that a court of chancery or equity is without jurisdiction *ratione materia* to try the issues thus presented on said obligations, which can only be tried by a court of law & by a jury; all of which matters & things this defendant doth aver to be true, & he pleads to the jurisdiction of this court in bar to the plaintiff's bill, & he prays the judgment of this court whether he should be compelled to make other or further answer to so much of said bill as is hereinbefore pleaded to, and he prays to be hence dismissed with his costs & charge in that behalf most wrongfully sustained.

JNO. T. LUDELING,
Solicitor for Def't.

18 I do hereby certify that, in my opinion, the plea is well founded in point of law.

JNO. T. LUDELING, *Counselor.*

Extract from Order Book.

MONDAY, *Dec.* 3*rd*, 1883.

J. H. MENDENHALL
vs.
CLARK N. HALL & CHAS. F. HALL. } No. 45. In Equity.

Plaintiff, by his counsel, appeared, and had the plea filed herein by the defendants, Clark N. Hall & Chas. F. Hall, set down for argument.

Extract from the Minutes.

MONDAY, *Oct.* 13*th*, 1884.

Court met pursuant to adjournment.
Present: His honor Alex. Boarman, district judge, presiding.

J. H. MENDENHALL
vs.
CLARK N. HALL & CHAS. F. HALL. } No. 45.

By consent of counsel, the demurrer & pleas filed in this case was [were] assigned for argument on to-morrow, October 14, 1884.

Extract from the Minutes.

TUESDAY, *October* 14, 1884.

Court met pursuant to adjournment.
Present: His honor Alex. Boarman, district judge, presiding.

J. H. MENDENHALL
vs.
CLARK N. HALL & CHAS. F. HALL. } No. 45. In Equity.

19 The demurrer filed in this case came on for argument.

Note of Evidence.

Counsel for defendant, Chas. F. Hall, offered and filed in evidence—

First. Act of sale from sheriff, S. M. Powell, to Chas. F. Hall, of date 17th January, A. D. 1883 (document as follows):

Endorsement: M. S. Powell, sheriff & *ex officio* tax-collector, to Chas. F. Hall. Deed. Filed for record January 18th, 1883. Certified copy. Sheriff's deed. Offered in evidence on the part of C. F. Hall. Filed Oct. 14th, 1884. J. B. Beattie, d'y clerk. Filed Sept. 4th, 1883. Wm. Ray, d'y clerk. Recorder's fee, $2.50.

Deed.

STATE OF LOUISIANA,
Parish of East Carroll. }

Be it known that this day, before me, Saunders D. Oliver, a notary public in and for said parish and State, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally appeared M. Shelly Powell, the sheriff and *ex officio* tax-collector in and for the aforesaid parish & State,
20 duly commissioned and qualified, who declared unto me, notary, that by virtue of the authority in him vested by the laws of the State of Louisiana and in pursuance of act No. 98 of the General Assembly of this State to enforce the miscellaneous ordinances of the constitution of 1879 for the relief of delinquent taxpayers, and providing for the seizure & sale, advertisement & transfer, of their property, approved on the 5th day of July, A. D. 1882, he did prepare a complete descriptive list of all real property situated in the parish of East Carroll, State of Louisiana, forfeited or sold to the State for delinquent taxes, and upon which any taxes were due to the State of Louisiana or to the parish of East Carroll prior to the first day of January, A. D. 1880, as shown by the tax rolls and records in the recorder's office of this said parish, which list showed the names of the persons to whom said property was assessed, the several years for which the taxes were due, and a description of the property so forfeited or sold, which said property he advertised on the fourth day of November, 1882, in the "East Carroll

Democrat," a newspaper published weekly in said parish & State, for sale, in the order set forth in said advertisement, to be sold at public auction at the door of the court-house in which the civil district court of said parish is held, beginning on the third Saturday of December, 1882, within the hours prescribed by law for judicial sales, for an amount sufficient to pay all the taxes,
21 interest, expenses, & costs due thereon on the first day of January, A. D. 1880, and the costs of sale under said act; and on said day of sale, between the hours prescribed by law, at the place aforesaid, thirty clear days' advertisement having expired as required by law for judicial sales, having complied with all the requirements & formalities of law specified in said act, he offered said property for sale at public action, in audible voice, in the order set forth in said advertisement, and continued said sales from day to day until all of said property had been offered, and, failing to sell all of the same, he continued from day to day without readvertisement & again offered for sale, at the place aforesaid, between the hours prescribed by law, all such property upon which no bids equal to the amount required had been made, to be sold on said second offering for an amount not less than the principal, interest, costs, & expenses aforesaid; whereupon, on the 17th day of January, A. D. 1883, Charles F. Hall, a resident of this parish & State, became the purchaser of the following-described property, to wit: Two hundred and seventy acres of land, composing a portion of "Concord Plantation," situated in this said parish and State, according to act of partition, recorded in the recorder's office of this parish, in Notarial Book "P," folios 290 & 291, recorded on the 11th day of February, 1876, the same having been seized for taxes due by Clark N. Hall, according to the tableaux and assessment-rolls of the
22 years 1877 & 1878, for the price & sum of two hundred and eleven $\frac{47}{100}$ dollars, as follows:

State taxes for the year 1877	$28 63
Parish taxes for the year 1877	28 63
Former costs	10 00
Interest	26 90
Advertisement	5 00
Tax-collector, for seizure, deed, & commission	7 97
Notary, for passing this deed	3 00
Recorder, for recording the same	2 00
Total	112 13

And State taxes for 1878	33 80
Parish taxes for 1878	28 60
Former costs	8 50
Interest	22 68
Tax collector, for seizure & commission	5 76
Total	99 34

which the said sheriff and *ex officio* tax-collector declared & hereby acknowledges that he has received in cash; wherefore he, the said appearer, further declared that, in consideration of the premises and by virtue of the authority in him vested by the laws of the State of Louisiana, he does hereby sell and adjudicate unto the said purchaser all right, title, interest, and claim which the said Clark N. Hall has or had in and to the said described property; to have and to hold the same unto the said purchaser, his heirs and assigns, for his and their own proper use, benefit, & behoof forever.

I, the said notary, do hereby certify that all taxes due on
23 said property have been fully paid up to date, as per tax receipts exhibited to me at the passing of this act.

Thus done and passed in the town of Providence, parish of East Carroll, State of Louisiana, in the presence of George W. Foster & James N. Turner, witnesses of lawful age residing in said parish, who hereto sign their names, together with the said sheriff and *ex officio* tax-collector and the said purchaser and me, the said notary, on this the 17th day of January, A. D. 1883.

M. S. POWELL,
Sh'ff & ex Officio Tax-Collector.
CHAS. F. HALL.
S. D. OLIVER,
Notary Public.

Attest: GEO. W. FOSTER.
JAS. N. TURNER.

STATE OF LOUISIANA, }
Parish of East Carroll. }

I hereby certify the within and foregoing to be a true and correct copy of the original act on file and of record in my office.

Given under my official signature & seal of office on this 16th day of August, A. D. 1883.

[RECORDER'S SEAL.] GEO. J. HOOK,
D'y Recorder.

24 Evidence closed, and after argument the court took time to consider.

Extract from the Minutes.

MAY 12TH, 1885.

Present: His honor Alec. Boarman, district judge, presiding.

J. H. MENDENHALL
vs.
CLARK N. HALL & CHAS. F. HALL. } No. 45. In Equity.

The demurrer filed herein on behalf of Chas. F. Hall is sustained. In this case, after argument by both parties, the law and evidence being in favor of the defendant, Chas. F. Hall, it is ordered and decreed that his demurrer be allowed; and it is further ordered and

decreed that his plea in this case be allowed, and that this bill, in so far as it relates to or affects Chas. F. Hall, be dismissed without prejudice, and reserving to the plaintiff the right to file a new bill as to him.

Read and signed in open court this 12th day of May, 1885.

ALECK BOARMAN,
U. S. Judge.

Filed May 12th, 1885.

J. B. BEATTIE, *D'y Cl'k.*

Extract from the Minutes.

SATURDAY, *May* 16, 1885.

Court met pursuant to adjournment.

Present: His honor Aleck Boarman, district judge.

J. H. MENDENHALL
vs.
CLARK N. HALL. } No. 45. In Equity.

25 The demurrer filed herein on the part of Clark N. Hall is overruled.

Endorsement: (Answer of Hall.) U. S. circuit court. Mendenhall *vs.* C. N Hall. In equity. No. 45. Filed July 20th, 1885.

Circuit Court U. States, 5th Circuit, Western District of Louisiana.
In Chancery.

J. H. MENDENHALL, Plaintiff,
vs.
CLARK N. HALL, Defendant. } No. 45.

The answer of Clark N. Hall, the above-named defendant, to the bill of complaint of the above plaintiff.

The defendant, now & at all times hereafter saving to himself all & all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, or imperfections in said bill contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, saith that he did execute the note sued on, but he avers that he is no longer the owner of the land described in plaintiff's bill of complaint, nor has he the possession thereof, nor had he at the date of the institution of
26 this suit, but he avers that said land was sued by the State of Louisiana, through her tax-collector, for taxes before the institution of this suit.

He avers that he is the lawful owner and *bona fide* possessor of the follow- judgments & note against the said J. H. Mendenhall, plaintiff, to wit:

A judgment for three hundred dollars, rendered on the 12th of May, 1876, & four $\frac{15}{100}$ dollars costs taxed, and a judgment for two

hundred and forty dollars, with interest from 4th April, 1876, & four $\frac{79}{100}$ dollars costs taxed, rendered on the 12th of May, 1876, which two judgments were rendered by O. C. Carrgill, J. P., in Delaware county, State of Ohio, in the suits of Horace Vance & Joseph Gregg, partners doing business under the name of Elkhart Wood Pulp Company, *vs.* John H. Mendenhall, Norman D. Perry, Andrew J. Clark, & Jacob L. Kline, partners doing business under the firm name of Delaware Paper Company, Nos. 100 & 111, duly certified transcripts of said suits being made parts of this answer as Exhibits "1" & "2."

He avers he is the legal holder & owner of a note executed by said Delaware Paper Co., through their secretary, J. L. Klein, and one of the partners constituting the commercial partnership doing business under the firm name of Delaware Paper Co., said note being for the sum of seventeen hundred & thirty-three $\frac{61}{100}$ dollars, with eight per cent. per annum interest from 1st June, 1876, pay-
27 able to the order of Jacob A. Sharer & by him endorsed to James Andrews, who endorsed it in blank to defendant in due course of trade & for a valuable consideration, which note is annexed and made a part of this answer as Exhibit 3.

Defendant says that said Delaware Paper Company was a commercial partnership doing business in said county and State, & that John H. Mendenhall & others above named were the members of said partnership, & that he is bound *in solido* for said note and judgments above mentioned, which said Mendenhall acknowledged to be due and correct in 1882.

Defendant alleges that under the law said judgments bear interest at the rate of five per cent. per ann. from their date, & that by law compensation took place as soon as he, defendant, acquired said note & judgments, which he did on or about the 10th of May, 1879. He pleads said notes in compensation of the notes sued upon.

He further avers that the payment made by him as alleged in the bill of complaint should be credited on the first note due according to law.

And this defendant denies all & all manner of unlawful combination & confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or
28 necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true, to the best of his [the] knowledge and belief of this defendant; all of which matters and things this defendant is ready to & willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with his reasonable costs & charges in this behalf most wrongfully sustained.

JNO. T. LUDELING,
Att'y, Counsellor.

Endorsement: U. S. C. C., west. dist. La. J. H. Mendenhall *vs.* Clark N. Hall. Filed July 21st. Lemuel Gustine, d'y clerk.

Replication.

U. S. Circuit Court for the 5th Circuit, Western Dist. of La.

J. H. MENDENHALL
vs.
CLARK N. HALL. } In Chancery.

The plaintiff in the above cause, for replication to the answer herein made and filed on part of defendant, Clark N. Hall, pleads a general denial to the allegations of the said answer, except in so far as they admit the execution of the obligation set forth and described in complainant's bill.

For further answer and replication complainant denies that
29 he is — any manner bound for the payment of the obligations set up and declared on in defendant's answer.

For further answer thereto he specially denies that defendant is owner of the said claims and notes.

For further answer he avers and specially — that the said defendant, Clark N. Hall, is estopped from claiming or pleading the extinction of the debts he is due complainant, as set forth in complainant's bill herein, for the reason that on the 5th day of March, 1882, he wrote and subscribed and mailed to complainant the letter annexed to and made part of his bill of complaint herein, in which he recognizes and acknowledges his indebtedness to plaintiff and begged for indulgence, which was granted on the strength of the promises and for reasons set forth in the said letter.

For all of which he prays that defendant's answer may be decreed insufficient, & that complainant have judgment, as prayed in his original bill, and for all equitable and general relief in the premises.

C. J. & J. S. BOATNER, *Solicitors.*

Endorsement: (Supplemental replication.) J. H. Mendenhall *vs.* C. N. Hall & Chas. T. Hall. Filed September 7th, 1885. J. B. Beattie, d'y cl'k.

30 United States Circuit Court, 5th Circuit and Western District of Louisiana.

J. H. MENDENHALL
vs.
CLARK N. & CHAS. T. HALL. }

The replication of J. H. Mendenhall, supplementary and amending that filed on July 21st, 1885.

Saving and reserving unto himself now and at all times hereafter all & all manner of benefits and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for further replication thereunto says that they [he] will maintain, aver, and prove their [his] said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that said answer of de-

fendant is uncertain and untrue, without this, that any other matter or thing whatsoever in said answer contained material or effectual in law to be replied unto, confessed or avoided, traversed or denied, is true. All such matters and things this repliant is and will be ready to aver, prove, and maintain as this hon. court shall direct; and repliant avers that the note of the Delaware Paper Company for the sum of seventeen hundred and thirty-three & $\frac{61}{100}$ — was executed & obtained by fraud and is absolutely without consideration; that it was never negotiated or placed on the market until after the maturity thereof; that it is not a just debt against the Delaware Paper Company, which failed in business and its
31 affairs placed in the hands of a syndic, nor has it ever been presented to the syndic of said company for payment.

Repliant avers that said defendant, if he holds said note, paid no consideration therefor, & if he did he acquired some time after the maturity thereof, & he took it subject to the equities between the original parties thereto, and that repliant is in no manner bound for said note and defendant has no right to compensate the debt sued for with said note.

Repliant further avers that the credits on the notes sued on were legally & honestly made and were placed on the notes at the instance, in the presence of, and at the request of the defendant, which will be shown on trial hereof; and your repliant humbly prays as in and by their said bill they have al*l*ready prayed.

C. J. & J. S. BOATNER,
Solicitors for Complainants.

Endorsement: (Application for commission to take testimony, interrogatories, and affidavit and order.) U. S. circuit court, 5th circuit, western district of La. J. H. Mendenhall *vs.* Clark N. Hall & Chas. F. Hall. Filed Sept. 9th. J. B. Beattie, d'y clerk.

32 United States Circuit Court, 5th Circuit & Western District of Louisiana.

J. H. MENDENHALL
vs.
CLARK N. HALL & CHAS. F. HALL. } In Equity. No. 45.

To the hon. the judges of said court:

J. H. Mendenhall, complainant herein, respectfully shows *that* to your hon. court that he desires to take his own depositions by commission; that his testimony is important and material in his behalf, and that the testimony of Jacob A. Shearer, a resident of Delaware, Delaware county, Ohio, is also important and material in his behalf; that there is no U. S. commissioner at Delaware, Ohio; wherefore complainant prays that a commission issue for that purpose, and that Walter B. Allright, a notary public, be appointed special commissioner to execute same & take their answers to the following interrogatories, respectively:

Int. to Jacob A. Shearer.

1st. What is your name and where do you reside?

2nd. What business were you engaged on 1st June, 1885?

3rd. Were you or not a member or interested as a partner in the Delaware Paper Co. at that time?

4th. Who were the other members of the Delaware Paper Company at that time?

33 5th. Did the Delaware Paper Co. or the book-keeper or secretary thereof execute any promissory note or obligation on the 1st day of June, 1875?

6th. If you say yes, please state to whom said note was given, for what rate of interest, & when did interest begin to run thereon.

7th. Who executed the note and who authorized the execution thereof?

8th. If you say Mr. Klein did so, please state what his full name is and what position he occupied & whether or not he had authority to issue or execute a note for as large an amount as the one inquired of without the consent or authorization of the members of the firm.

9th. Did or not Mr. Klein, as secretary of "The Delaware Paper Co.," execute & issue to you the promissory note of the Delaware Paper Co. of date June 1st, 1875, for the sum of seventeen hundred & thirty-three & $\frac{61}{100}$ dollars, payable twelve months after date, bearing 8% per annum interest from maturity?

10th. If, in answer to the 9th interrogatory, you say that such a note was issued to you, please state whether there was more than one of the same date & amount executed and delivered to you.

11th. What was the consideration of the note above inquired about?

12th. How long did you hold the note in your possession?

34 13th. Did you or not have the note inquired about in interrogatory 9th in your possession after the maturity thereof?

14th. Did you ever dispose of or give possession of the note to any other person; if so, to whom?

15th. If you say you enclosed & delivered the note to James Andrews, please state when you did so. Was it after the maturity of the note, & if you endorsed it to James Andrews did you do so without recourse? If so, why did you so endorse it?

16th. Did James Andrews pay you any consideration for the note; if so, how much?

17th. Who is A. J. Clark? Was he a member of the "Delaware Paper Co.?" Please state what relation or connection he bore to you.

18th. Have you a letter in your possession from James Andrews to A. J. Clark, of date January 7th, 1878? If yea, please state how you know the letter was written by James Andrews, have you ever seen him write & sign his name, and did he write and sign the letter.

19th. If you say you have such a letter annex it to your answers and identify it by some mark.

20th. Do you know what note James Andrews referred — in said letter?

35 21st. Was it or not the $1,733.61 note that was executed by Klein in your favor of date June 1st, 1875, that he referred to in said letter?

22nd. Please state the financial condition of the Delaware Paper Co. on or about the 1st day of June, 1875.

23rd. At whose instance was the $1,733.61 note above referred to issued?

24th. Was or not the said company at that date insolvent or in failing circumstances? If yea, —.

25th. Was or not A. J. Clark at the time said note was executed & issued aware of the financial embarrassment of the concern?

26th. How long thereafter before the company failed?

27th. Was there a syndic or assignee or other person appointed by the courts to take charge of the affairs of the company?

28th. Has this note of which inquiry has been made ever been presented to the syndic or assignee for payment, or has the holder ever participated in the distribution of funds to the creditors by the insolvent company? If not, why not?

36 *Interrogatories to J. H. Mendenhall.*

1st. Are you plaintiff in this suit? Where do you reside?

2nd. Please examine the notes annexed to the commission, marked "A," "B," & "C," & state who placed the credits thereon.

3rd. If you say you credited the notes with the amounts with which they are credited please state whether or not the payments were actually made and by whom.

4th. Were you authorized to make the credits by any one? If so, by whom?

5th. Please state whether or not Clark N. Hall knew that the notes had been credited with the different amounts & whether or not he consented thereto.

6th. Was the Delaware Paper Co. a commercial firm, joint-stock company, or a corporation?

7th. What kind of business was it engaged in?

8th. Were you a member of the Delaware Paper Company, either as a partner or stockholder or otherwise?

9th. Do you know anything about the execution of a certain note by J. L. Klein, acting as secretary of the Delaware Paper Co.,

37 in favor of Jacob A. Shearer for the sum of $1,733.61, of date June 1st, 1875, & due twelve months after date?

10th. If you say such a note was executed at that time please state what debt the note represented; the consideration of the note.

11th. Did the Delaware Paper Co. owe Jacob A. Shearer the amount for which the note of $1,733.61 was given?

12th. Who is J. L. Kline? If you say he was the secretary of the Delaware Paper Co. please state whether or not he had authority to execute promissory notes in the name of the company or sign the company's name to promissory notes.

13th. Did the Delaware Paper Co. fail in business; if yea, when?

14th. Was A. J. Clark a member of the Delaware Paper Co.?

15th. What relation or connection, if any, was he to Jacob A. Shearer?

16th. What was the financial condition of the Delaware Paper Company on the 1st of June, 1875?

17th. If in answer to the 16th interrogatory you say the company was in embarrassed & failing circumstances, please state, if
38 you know, whether or not A. J. Clark, J. L. Klein, & J. A. Klein, & J. A. Shearer, one or all of them, were aware of the fact.

18th. If you say that the company failed, please state whether or not the affairs were placed in the hands of an assignee, syndic, or receiver. If yea, were there ever any payments made by said assignee, receiver, or syndic on the debts of the concern?

19th. If you say that such payments have been made, please state whether any payment has ever been made on the $1,733.61 note executed in favor of J. A. Shearer, above referred to. If not, please state why.

20th. Has any payment or *pro rata* distribution of the funds ever been insisted on by the holder of said note?

21st. State any other fact within your knowledge touching the want of consideration of the note above enquired about.

C. J. & J. S. BOATNER,
Solicitors.

Jno. S. Boatner, being duly sworn, says he is a member of the law firm of C. J. & J. S. Boatner, solicitors of complainant in this suit; that he verily believes that the testimony of Jacob A. Shearer and J. H. Mendenhall and the documents called for is material
39 and necessary in this prosecution of this cause; that said Shearer is a resident of Delaware, Ohio, more than one hundred miles from the place where this hon. court is held; that J. H. Mendenhall is also a resident of Delaware, Ohio, and now absent from your said district.

JNO. S. BOATNER.

Sworn to & subscribed before me on this 9th September, 1885.
[SEAL.] J. B. BEATTIE, *D'y Cl'k.*

Order.

Let the foregoing petition and affidavit — considered and the law authorizing it, let a commission issue as prayed for, and let Walter B. Albright, notary public of Delaware, Delaware Co., Ohio, be appointed special commissioner to execute the same, and let the return day be fixed for October 15th, 1885.

J. B. BEATTIE, *D'y Clerk.* [SEAL.]

Endorsement: Notice of filing of interrogatories to attorneys for defendants. No. 45. U. S. circuit court. J. H. Mendenhall *vs.* Clark N. and Chas. F. Hall.

Marshall's Return.

Received in office on September 10th, 1885, and on same day of same month and year made service of citation and interrogatories by handing same to J. T. Ludeling, one of the attorneys for defendants.

W. H. HANNA, *D'y Marshall.*

40 Filed Sept. 10th, 1885.

J. B. BEATTIE, *D'y Clerk.*

Western District of Louisiana, U. S. Circuit Court.

J. H. MENDENHALL
vs.
CLARK N. & CHAS. F. HALL. } No. 45.

To Mess. Ludeling & Stillman, att'ys for def'ts, Monroe, La.:

Take notice that complainant hath this day filed interrogatories to J. H. Mendenhall and Jacob A. Shearer, of Delaware, Delaware Co., Ohio—a certified copy of said interrogatories accompanies this notice—and that you may, if you think proper, put such cross-interrogatories as are requisite and fit, and file the same in this court within three days from the service hereof.

Clerk's office, Monroe, La., Sept. 9th, 1885.

[SEAL.] J. B. BEATTIE, *D'y Clerk.*

Cross-Interrogatories.

U. S. Circuit Court, 5th Circuit, Western District of Louisiana.

J. H. MENDENHALL
vs.
CLARK N. HALL, &c. } No. 45.

41 The defendant reserves all legal objections to the testimony of Jacob Shearer & J. H. Mendenhall sought to be taken by commission in the above-entitled cause on behalf of plaintiff, & he propounds the following cross-interrogatories to them:

To Jacob A. Shearer:

1st. Who were the members of the Delaware Paper Company? Was not J. H. Mendenhall a member of said company?

2nd. What was the business or object or purpose of said company? Did it not buy materials to be manufactured into paper for sale?

3rd. Was not J. L. Kline secretary of said company?

4th. Did he not have authority to sign notes for the company with the knowledge and assent of the company?

5th. Did he not sign a note in your favor for $\$1.733\frac{61}{100}$, dated June 1st, 1875, against said company?

6th. Did you not endorse said note to James Andrews? When was this?

7th. Is James Andrews dead? When did he die?

LUDELING & STILLMAN, *Att'ys.*

42 Endorsements: Commission. No. 45. U. S. circuit court. J. H. Mendenhall *vs.* Clark N. Hall & Chas. F. Hall. Received in office, opened, & filed September 26th, 1885. J. B. Beattie, d'y clerk.

Circuit Court of the United States of America, Fifth Circuit and Western District of Louisiana, Holding Sessions in the City of Monroe, La.

To Mr. Werter B. Albright, notary public, Delaware, Delaware Co., Ohio.

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you J. H. Mendenhall and Jacob A. Shearer, of Delaware, Delaware Co., Ohio, and them duly examine on the annexed interrogatories and cross-interrogatories, on oath, touching and concerning certain matters and things in a case now pending in the said court, wherein J. H. Mendenhall is plaintiff and Clark N. and Charles F. Hall are defendants; and the same examinations, so taken and reduced to writing, you certify under your hand and seal and send enclosed to this court, on or before October 15, 1885, to be read in evidence on the trial of said
43 cause, and send also this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Monroe, Louisiana, this 14th day of September, in the year of our Lord 1885, and of the Independence of the United States of America the 110th.

J. B. BEATTIE, *D'y Clerk.*

Answers to Interrogatories.

Deposition- of sundry witnesses taken before me, Werter B. Albright, a notary public within and for the county of Delaware and State of Ohio, especially commissioned to the taking hereof, pursuant to the annexed commission, at my office, in said county, on the 23rd day of September, A. D. 1885, and on such suc-eeding days as hereinafter appears, to be read as evidence on behalf of the plaintiff in an action pending in the United States circuit court, 5th circuit and western district of the State of Louisiana, wherein John H. Mendenhall is plaintiff and Clark N. Hall and Charles F. Hall are defendants.

The said depositions were taken on certain interrogatories with me filed, hereto attached, and herewith returned, as more fully hereinafter is made to appear.

Jacob A. Shearer, being by me first duly cautioned and
44 sworn, as hereinafter is more fully certified, deposes and says as follows:

1st answer to 1st interrogatory: My name is Jacob A. Shearer; residence, Stratford, near Delaware, Delaware county, Ohio.

2nd. I was a hired hand in the Delaware Paper Mills.

3rd. I was not.

4th. J. H. Mendenhall, W. D. Perry, J. L. Kline, A. J. Clark composed the Delaware Paper Co.

5th. I can't tell exactly the dates, but they wrote out for me, some time in 1875, in June, a note.

6th. Note was given to myself—seventeen hundred and thirty some dollars and some cents; I cannot tell exactly the amount; was due one year from date, eight per cent.; I think interest began to run after due.

7th. J. L. Kline executed the note; A. J. Clark authorized the execution.

8th. I don't — his middle name, but 'twas [think] Jacob L. Kline was secretary of Delaware Paper Company. I couldn't answer as to his authority to execute such a note.

45 9th. Yes, sir; there was not.

11th. There was no consideration; 'twas simply give to me to hold.

12th. I held the note from June, 1875, until some time in 1878.

13th. O, yes.

14th. Only to Mr. Andrews—James Andrews.

15th. In 1878—in January; it was after its maturity. I endorsed it to James Andrews "without recourse" because he offered me half what he would make out of the note, because he was to collect the note and I was to run no risk.

16th. No, sir.

17th. A. J. Clark is my father-in-law; he was a member of the Delaware Paper Company.

18th. Yes, sir; I have such a letter. I know it was from James Andrews because it was signed by him. He was in the South at the time.

19th. This is the letter; you have marked it Exhibit "A;" it is in two parts and both are marked.

20th. Yes, sir.

21st. It was.

22nd. They were embarrassed at that time.

46 23rd. At A. J. Clark's.

24th. They were in failing circumstances, and I do not think they were solvent.

25th. I do not know whether he was or not.

26th. I think they failed in May, 1876.

27th. Yes, sir; an assignee.

28th. The note was never — because the company owed me nothing on the note.

The above were all the answers to the direct interrogatories, and thereupon I submitted to the witness the cross-interrogatories with me filed and herewith returned as follows:

Cross-Interrogatories.

1st answer to 1st cross-interrogatory. J. H. Mendenhall, W. D Perry, J. L. Kline, A. J. Clarke; yes, sir.

2nd. They manufactured paper; yes, sir; bought materials to be manufactured into paper for sale.

3rd. Yes, sir.

4th. I couldn't tell whether he had authority to sign notes for the company. I do not know whether he was in the habit of signing notes for the company or not. I never saw but the one.

5th. Yes, sir.

6th. Yes, sir; I endorsed the note to James Andrews, in January, 1878.

7th. James Andrews is dead. I think he died about five years ago.

(Signed) JACOB A. SHEARER.

47 JOHN H. MENDENHALL, being by me first duly cautioned and sworn, as hereinafter is more certified, deposes and says as follows:

1st answer to 1st i nterrogatory. I am plaintiff in this action; I reside — Delaware, Delaware county, Ohio.

2nd. I wrote them.

3rd. The payments were actually made and made by Clark N. Hall.

4th. I was the owner of the notes.

5th. Yes; he knew it, and consented and dictated the endorsement in my presence, and directed on which notes the credits should be placed.

6th. It was not incorporated, merely a firm.

7th. In the manufacture of paper.

8th. I was a partner.

9th. I learned that such a note was issued some time after it had been issued.

10th. It represented no debt.

11th; No, sir; it did not.

12th. J. L. Kline was a member of the firm and had charge of the books; he was the book-keeper; he did sign checks and some notes; I cannot say it was by special authority, but by custom, as having charge of the books and being a member of the firm.

13th. Yes; they failed in the spring of 1876.

14th. He was.

48 15th. Father-in-law.

16th. They were very much embarrassed and in failing circumstances.

17th. A. J. Clark and J. L. Kline knew it.

18th. The company failed and an assignee was appointed; there were payments made on the debts; about eight or nine thousand dollars was paid out by the assignee.

19th. No payment was made on the $1,733.61-dollar note; the note was not brought forward, and if it had been it would have been contested.

20th. No, sir; the note has never been presented.

21st. There was no consideration whatever received for the note.

(Signed) JOHN H. MENDENHALL.

THE STATE OF OHIO, } ss:
Delaware County, }

I, Werter B. Albright, notary public in and for the said county and State, duly commissioned and qualified, and especially commissioned for the taking of these depositions, as appears of record in the United States circuit court, 5th circuit & western district of the State of Louisiana, do hereby certify that the above-named Jacob A. Sharer and John H. Mendenhall were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the said depositions were by them subscribed in my presence, as above set forth; that they — reduced to writing
49 by myself in the presence of the witnesses, were by me read and explained to the witnesses before signing, and were taken at the time and place above set forth; that I am not counsel or attorney or relative of either party to this action, or otherwise interested in the event of this suit.

And further that said witnesses reside more than one hundred miles from the *the* place of trial of the above-entitled action.

In testimony whereof I have hereunto set my hand and seal notarial this 23rd day of September, A. D. 1885.

[SEAL.] WERTER B. ALBRIGHT,
Commissioner and Notary Public in and for the County of Delaware and State of Ohio.

Cost Bill.

Writing & certifying 1,200 — @ 20c. per 100	$2 40
Swearing 2 witnesses, @ 10c.	20
Clerk's certificate	40
Postage	08
Total	$3 08

Rec'd of plaintiff the above in full. Witness J. A. Shaver was paid his fee by plaintiff.

W. B. ALBRIGHT, *N. P.*

STATE OF OHIO, } ss:
Delaware County, }

I, Charles M. Jaynes, clerk of the court of common pleas, being a court of record within and for the county and State aforesaid, do hereby certify that Werter B. Albright, Esq., was at the date
50 of taking the annexed depositions a notary public within and for said county, duly authorized to take the same; that I know his handwriting and verily believe that his signature to said certificate is genuine, and that the annexed instrument is executed and acknowledged according to the laws of the State of Ohio.

In testimony whereof I hereunto set my hand and affixed the seal of said court, at Delaware, O., this 24th day of September, A. D. 1885.

CHARLES M. JAYNES, *Clerk,*
[SEAL.] By G. H. WALDO, *D'y Clerk.*

EXHIBIT A. Referred to in the Foregoing Testimony of Jacob A. Shaver.

Regular Memphis & New Orleans Packet on Board the Passenger Steamer John A. Scudder.

J. F. Hicks, master; C. H. Dix, clerk.

JAN'Y 7TH, 1878.

A. J. Clark, Esq.

DEAR SIR: I will accept the proposition made father regarding the Dela. Paper Co. note held by Jacob, viz., give him one-half that can be made. I think we can make something worth while out of Mendenhall, as he still has an interest in land here. In order
51 to reach him it will be necessary to commence suit here, & that I will do on his arrival; he is daily expected. As the suit must be in my name, Jacob must sign it over to me; it may be done "without recourse;" in that way Jacob, of course, is in no way responsible.

Yours truly, JAS. ANDREWS.

Notes Referred to in Foregoing Deposition of J. H. Mendenhall.

Note marked "A."

$2,000.00. CARROLL PARISH, LA., *Dec. 24th*, 1875.

On the first day of January, A. D. 1877, I promise to pay to John H. Mendenhall or order two thousand ($2,000.00) dollars, with eight per cent. per annum interest from date, payable annually.

Payable at the Louisiana National Bank, in New Orleans, La.

(Signed) CLARK N. HALL.

[Written across the face in red ink:] *Ne varietur*, Carroll parish, La., Dec'b'r 24th, 1875. S. Duncan Gleen, not. pub.

(Endorsed:) Jno. H. Mendenhall.

(Endorsed:) Rec'd on the within note Nov. 18th, 1878, four hundred and eighty dollars, being the interest up to Jan'y 1st, 1879. Paid on the within note Nov. 18th one hundred and eleven dollars ($111), as paid Jan'y 1st, 1879.

(Endorsed:) Filed Sept. 4th, 1883. Wm. Ray, d'y clerk.

52 Note marked "B."

$2,000.00. CARROLL PARISH, *Dec'r 24th*, 1875.

On the first day of Jan'y, A. D. 1878, I promise to pay to John H. Mendenhall or order two thousand ($2,000.00) dollars, with eight per cent. per annum interest from date, payable annually.

Payable at the Louisiana National Bank, in New Orleans, La.

(Signed) CLARK N. HALL.

[Written across the face in red ink:] *Ne varietur*, Carroll parish, La., Dec'b'r 24, 1875. S. Duncan Gleen, not. pub.

(Endorsed:) Rec'd on within note Nov. 18th, 1878, four hundred and eighty dollars, being the interest in full up to January 1st, 1879.
(Endorsed:) J. H. Mendenhall.
(Endorsed:) Filed Sept. 4th, 1883. Wm. Ray, d'y clerk.

Note marked "C."

$1,123.00. CARROLL PARISH, *Dec'r* 24, 1875.

On the first day of January, A. D. 1879, I promise to pay John H. Mendenhall eleven hundred and twenty-three ($1,123.00) dollars, with eight per cent. per annum interest from date, payable annually.
Payable at the Louisiana National Bank, in New Orleans, La.
(Signed) CLARK N. HALL.

[Written across the face in red ink:] *Ne varietur*, Carroll parish, La., Dec'b'r 24th, 1875. S. Duncan Glenn, not. pub.

(Endorsed:) Rec'd Nov. 11th, 1878, two hundred and sixty-nine and $\frac{52}{100}$ dollars, being interest in full up to Jan'y 1st, 1879.

53 (Endorsed:) Filed Sept. 4th, 1883. Wm. Ray, d'y clerk.

Extract from the Minutes.

SATURDAY, *October* 24, 1885.

Court met pursuant to adjournment.
Present: His hon. Alex. Boarman, district judge, presiding.

J. H. MENDENHALL
vs.
CLARK N. HALL. } No. 45. In Equity.

This cause, on motion of counsel for complainants, was assigned for hearing on Thursday, October 29th, 1885.

Extract from the Minutes.

THURSDAY, *Oct. 29th*, 1885.

Court met pursuant to adjournment.
Present: His hon. Aleck Boarman, district judge, presiding.

J. H. MENDENHALL
vs.
CLARK N. HALL. } No. 45. In Equity.

As per assignment, this cause came on to be heard, and same continued until to-morrow, Friday, October 30th, 1885.

Extract from the Minutes.

FRIDAY, *October 30th*, 1885.

Court met pursuant to adjournment.
Present: His hon. Alex. Boarman, district judge, presiding.

54 J. H. MENDENHALL *vs.* CLARK N. HALL. } No. 45. In Equity.

By consent of counsel this cause was reassigned for hearing on Wednesday, Nov. 18th, 1885.

Extract from the Minutes.

SATURDAY, *November 21st*, 1885.

Court met pursuant to adjournment.
Present: His hon. Aleck Boarman, dist. judge, presiding.

J. H. MENDENHALL *vs.* CLARK N. HALL. } No. 45. In Equity.

By consent of counsel this cause was assigned for hearing at Opelousas, at the January, 1886, term of the U. S. circuit court.

Extract from the Minutes.

MONDAY, *January 11th*, 1886.

Court met pursuant to adjournment.
Present: His honor Aleck Boarman, dist. judge, presiding.

J. H. MENDENHALL *vs.* CLARK N. HALL. } No. 45. In Equity.

This cause came on, as per assignment, to be heard.
Counsel for complainant offered in evidence—
1st. Act of sale and mortgage from John H. Mendenhall to Clark N. Hall, filed and marked Exhibit "A."
2nd. Certified copy of act of partition between Wm. C.
55 White, James C. Andrews, and Clark N. Hall, filed and marked Exhibit "B."
3rd. Testimony of John H. Mendenhall, taken under commission by W. B. Albright, special commissioner, on 23rd Sept., 1885, and exhibits thereto attached. Filed and marked Exhibit "C."
4th. Acknowledgment of Jacob A. Shaver, dated 31st January, 1880. Filed and marked Exhibit "D."
5th. Letters of Clark N. & Chas. F. Hall, dated, respectively, March 5th, 1882. Filed and marked Exhibit "E."
Complainant's testimony closed.
Counsel for defendant offered in evidence the following exhibits:
1st. Certified transcript of judgments in suits of Elkhart Wood

Pulp Company *vs.* Delaware Paper Company. Filed and marked Exhibits "A" & "B."

2nd. Note of Delaware Paper Company for $1,733.61, of date June 1st, 1875. Filed and marked Exhibit "C."

Testimony closed, and, after argument by counsel, the cause was submitted and same taken under advisement.

Exhibits Offered in Evidence on Trial of the Cause.

EXHIBIT "A." Offered in evidence by complainant.

(*Deed.*)

STATE OF LOUISIANA, }
Parish of Carroll. }

Be it known and remembered that this day, before me, S.
56 Duncan Glenn, a notary public in and for said parish and State, duly commissioned and sworn, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared John H. Mendenhall and his wife, Margaret R. Reynolds, residents of the city of Delaware, in the State of Ohio, who declared unto me, notary, that they have this day bargained, sold, and delivered, and by these presents do hereby bargain, sell, and deliver, unto Clark N. Hall, a resident of said parish and State here present, purchasing and accepting for himself, his heirs and assigns, and acknowledg*ment* due delivery thereof, their whole interest (the same being one-fourth) in and to the following-described property, situated, lying, and being in this parish and State, to wit: Lot No. thirty-eight (38), containing about one hundred and sixty (160) acres, being the same described in and conveyed by the deed from Wm. J. Graham to Hiram B. Tibbetts, bearing date Feb'y 4th, A. D. 1847; lot No. (39) thirty-nine, containing one hundred and sixty (160) acres, more or less, being the same described in and conveyed by the deed of John D. Imboden & wife to said Hiram B. Tibbetts, bearing date of Jan'y 3rd, A. D. 1850; lot number forty (40) and a small tract of land adjoining the same and lying immediately in the rear thereof, containing in all about two hundred (200) acres, being the same described in and conveyed by the deed from William Benjamin & wife to said Hiram B. Tibbetts, bearing date
57 April 26th, A. D. 1845; all in township number (20) twenty of range number thirteen (13) east; also so much of the south or southeast end of lots number two (2) and three (3), in section number sixty-seven (67), in said township and range, as shall contain the quantity of fifty (50) acres as described and conveyed by deed from Warren B. Benton to Hiram B. Tibbetts, bearing date the 21st June, A. D. 1885, the whole tract hereby conveyed containing five hundred and seventy-seven $\frac{41}{100}$ (577.41) acres; also the up-er half of lots forty-one (41), forty-two (42), & forty-three (43), & back lot number five (5) of section numbered sixty-seven (67), in township number twenty (20), range number thirteen (13) east.

The said upper half of said tract of land containing three hundred and eighteen $\frac{11}{100}$ (318.11) acres, being the — described in — by deed of donation from Jeremiah Watson & wife to Laura Sophia Boone & her husband, Clayton Boone, bearing date March 14th, A. D. 1838.

Also the quantity of one hundred and six & $\frac{32}{100}$ acres of land adjoining the tract above described & lying in the lower side thereof, being one-third of the remaining half of the whole tract of six hundred and thirty-six & $\frac{22}{100}$ (136.22) acres as described in and conveyed by the deed of sale from Jeremiah Watson & wife to said Clayton Boone, bearing date March 14th, A. D. 1838, & contained in the same instrument with the aforesaid deed of donation; also the east half of the northeast quarter of section number fifteen (15), in township number twenty (20), range number twelve (12) east, containing eighty (80) acres, as per receiver's certificate, dated
58 March 2nd, A. D. 1840, except a piece of land (30) thirty feet by forty (40) feet, which contains the family cemetery of Hiram B. Tibbetts, with right of access to same at all times, the foregoing-described land being the same sold John H. Mendenhall and William C. White by Hiram B. Tibbetts and Laura S. Tibbetts by deed of sale, dated January 30th, A. D. 1866.

The consideration of this sale is the price of & sum of five thousand one hundred and twenty-three (5,123), for the payment of which the said Clark N. Hall has this day made and executed his three several promissory notes of even date with this act, the first note being for the sum of two thousand ($2,000) dollars and due January the first, A. D. 1877; the second note being for a like sum and due January the first, A. D. 1878; the third and last note being for the sum of eleven hundred & twenty-three ($1,123) dollars & due January the first, A. D. 1879; all of said notes bearing eight per centum per annum interest annually from date until paid, & payable to John H. Mendenhall or order, which said notes I, the said notary, have paraphed with the words "*ne varietur*," and dated and signed my name officially across their respective faces in order to more fully identify them with this act.

Now, in order to secure the full and punctual payment of said notes at maturity or any part thereof, with the interest as aforesaid, the said Clark N. Hall further declared that he does hereby mortgage and specially hypothecate unto and in favor of the
59 *of the* vendor herein or any future holder or holders of said notes all the foregoing-described property, binding and obligating himself not to sell, mortgage, or in anywise encumber said property to the prejudice of this act of mortgage.

The mortgage certificate required by the civil code of this State is dispensed with by the parties hereto, and me, notary, held harmless for passing this act without the production of the same.

Thus done and passed, in the parish and State aforesaid, in the presence of Daniel S. Vinson and Otto C. Wassman, lawful witnesses, who sign hereto with said parties and me, notary, on this the 24th day of December, A. D. 1875.

The word annually, interlined on fourth page, was done before signing.

JOHN H. MENDENHALL,
MARGARET B. MENDENHALL,
Authorized by me, JOHN H. MENDENHALL.
CLARK N. HALL.

Attest:
D. S. VINSON.
O. C. WASSMAN.

S. DUNCAN GLENN,
Notary Public.

A true copy of the original on file and of record in my office.
[SEAL.] GEO. J. HOOK,
D'y Recorder, Parish of East Carroll, La.

Endorsed: John H. Mendenhall to Clark N. Hall. Deed
60 with mortgage. Filed for record De'b'r 24th, 1875. Certified copy. A. Recorder's fee, $2.50. Filed Jan'y 11th, 1886. J. B. Beattie, d'y clerk.

EXHIBIT "B." Offered in evidence by complainant.

Certified Copy of Act of Partition.

This indenture, made this 10th day of Feb'y, 1876, by and between William C. White, a resident of the State of Ohio, James Andrews, & Clark N. Hall, both residents of the parish of Carroll & State of Louisiana.

Whereas the said Wm. C. White, James Andrews, and Clark N. Hall are now the owners of the Concord plantation, situated, lying, and being in the parish of Carroll, fronting on the Mississippi river, bounded on the west by the tract of land known as the Benjamin Place, on the east by Point Lookout, and the north by the lands of Col. Benton's estate: Now, it — covenanted, granted, & agreed by and between the parties hereto that in making a partition of said Concord Place — shall be made in the manner following:

Said William White shall thenceforth have, hold, possess, and enjoy in separalty by himself, his heirs and assigns, for his share and proportion of said premises, commencing at point "D" base of the lower levee, on line between Benjamin and Concord; thence
north one and a quarter west 129.50 chains to stone corner
61 marked "A" on map; thence east 11.75 to point "B" at stake; thence north 14.20 to back line; thence box elder north 7 east 33 links, marked "X," commencing at point "B," thence south 11¾ east 13.50; thence south 11 east 14.34; thence south 6¾ east 30.40 to base of levee set stake; thence south 6¼ west 26.65 to point of commencement, thus running a division line in such a manner so as to cut off from the west side 187.77 acres of cleared land for William C. White.

It is further agreed in this act of partition the said White shall become the owner of the following-described property, to wit: Lots No-. 2, 3, & 4 of fractional section No. 67 & the E. ½ of fractional section No. 69 in township No. 20 of range No. 13 east, containing four hundred and fourteen $\frac{64}{100}$ acres (414.64):

It being understood that the interest of said White consists of one hundred and three $\frac{61}{100}$ acres of the above-described lots; and reference is here made to deed of record from Hiram B. Tibbetts to Mendenhall and White, of record in Notarial Book O, folios 441 & 442, in the recorder's office of this parish.

It is further agreed that the following land shall be the property of Clark N. Hall: Commencing at the point marked "B," thence E. 13.09 to point "C"—set stake; thence south 7¼ E. 24.50; thence south 10 east 23.75; thence south 57¾ W. 15.19—set stake in ditch; thence south 19½ E. 58.59, set stake 53 links from base of levee; thence S. 68 W. 18.94 to Mrs. White's corner at base of levee;
62 thence N. 6¾ west 30.40; thence N. 11 W. 14.34; thence N. 11¾ W. 13.50; thence N. 1½ W. 59.65 to point "B," making 160 acres of cleared land; also about 33 acresoff the east end of a tract known as the 50-acre tract deeded by Benton to Tibbitts; also a tract of land in the s'west corner of lot 1, containing 35.38 acres, making the interest of Clark N. Hall 220.38 acres, more or less, inside of the levee, and a tract of land (woodland) lying outside of the levee in lots 38 & 39, leaving the east side of said "Concord Place" 522.07 acres, which is agreed and understood shall be the property of James Andrews.

This act of partition in its description of lands is made in accordance with the map now on file in the recorder's office of Carroll parish, La., as surveyed by F. F. Montgomery, C. E., on the 10th day of Feb'y, 1876.

It is further agreed and covenanted between the parties hereto that the gin-house, storehouse, windmill, stables, & fences shall remain as common property in proportion to their respective interests; the quarters having been divided between the parties, it is understood that each can move his share when so disposed.

In witness whereof we have hereunto set our hands on the day and date first above written in the presence of Otto C. Wassman & Frank S. Garner, competent witnesses residing in this parish.

WILLIAM C. WHITE.
JAMES ANDREWS.
CLARK N. HALL.

Attest: OTTO C. WASSMAN.
FRANK S. GARNER.

63 STATE OF LOUISIANA, }
Parish of East Carroll. }

I hereby certify that the within and foregoing is a correct copy of the original act of partition on file and of record in this office in Notarial Book "P," folios 290 & 291.

Given under my hand and official seal on this 23rd day of August, 1883.

GEO. J. HOOK,
D'y Recorder.

[SEAL.]

Endorsed: White, Andrews, & Hall to Concord plantation. Act partition. Certified copy of act of partition. "B." Recorder's fee, $2.50. Filed Jan'y 11th, 1886. J. B. Beattie, d'y clerk.

EXHIBIT C. Offered in evidence by complainant.

(NOTE.—This exhibit comprises interrogatories & cross-interrogatories propounded to Jacob A. Sharer and John H. Mendenhall and the answers thereto, together with exhibits thereto attached,
64 all of which are before copied into this record. See pages 43 to 50, inclusive.)

EXHIBIT D. Offered in evidence by complainant.

Acknowledgment of J. A. Sherer.

Know all men by these presents that I, Jacob A. Sherer, of Delaware county, Ohio, do hereby constitute and appoint John H. Mendenhall my attorney, for me and in my name, to demand and receive of James Andrews or any other person holding or having in his possession the following-described promissory note, to wit: "Signed by 'The Delaware Paper Co.,' dated June 1st, 1875, due twelve months after date, with 8% interest after due, and being for the sum of seventeen hundred thirty-three $\frac{61}{100}$ dollars ($1,733.61), payable to Jacob A. Sherer or order (or bearer)," and I hereby authorize him to take such legal measures to get possession thereof as may become necessary.

(Interlined:) Said note having been endorsed by me to said Andrews for collection & for no other purpose, & after.

Whatever my said attorney shall lawfully do in the premises I do hereby confirm the same as if I were personally present and did the same.

In witness whereof I have hereunto set my hand and seal this 31st day of Jan'y, A. D. 1880.

JACOB A. SHERER. [SEAL.]

Signed and sealed and acknowledged in presence of—
J. J. GLOVER.
J. R. SIMPSON.

65 THE STATE OF OHIO, } *ss:*
Delaware County, }

Before me, John J. Glover, a notary public in and for said county, personally appeared the within-named Jacob A. Sherer and acknowledged the signing and sealing of the within power of attorney to be his voluntary act and deed this 31st day of January, A. D. 1880.

[SEAL.]

JOHN J. GLOVER,
Notary Public in and for Delaware County, Ohio.

EXHIBIT E. Offered in evidence by complainant.

(Letter.)

(1) CONCORD PLANTATION, LA., *March 5th*, 1882.

Jno. H. Mendenhall, Esq., Delaware, Ohio.

MY DEAR SIR: Yours of Feb'y 27th came to hand last eve; found us all well, but the highest water known since "'56."

Nearly all the levees have broke from Helena to Vicksburg on both sides except the Bass & Goodrich's.

The Elton levee, three miles above Lake Providence, broke last Monday and would — overflowed town, but they all turned out and stopped it; but still there is danger yet.

We have topped the Bass levee for nearly a mile at Blue Ridge & Judge Montgomery's.

66 With the high water & 40 days rain there is hardly a plantation that you can plow at all.

The plowing is fully 3 weeks behind last year.

Now for business:

When I came to your city I came in good faith, and upon my return met with the misfortune of one party going back on his (page 2) word to loan me $1,000 *dollars*; so then I tried to borrow it elsewhere & failed.

Then Charley & I tried together and talked the matter over, and finally agreed to let you have the $1,500 *dollars* we had and pay $1,000 more in the fall, as I wrote Mr. Will. A. Hall, and you excepted; that proposition was made by me in good faith.

Then, in order to make the $1,000 *dollar* payment next fall, I had to go to work and work the plantation to best advantage. So I went — Lawyer J. M. Kennedy and rented 300 acres — land of estate of Jas. Andrews and ten mules, 2 wagons, and plows, &c., agreeing to pay next fall $1,000 *dollars* & call the $400 *dollars* due me on salary of last year paid. I turned around and rented 200 acres to the negroes at $6.00 and the mules at $25.00, and agreed to gin their cotton at $2.50 for every tied bale of cotton regardless of weight.

Now, in order for these hands working the 200 acres (except Lewis Gregory), they had to have supplies, I had to stand good for them or they could not get them, so I went to Capt. W. B. Keene and offered him the business. We talked and fooled around for

67 5 days and finally they (3rd page) took the business as follows:

He agreed to supply the hands, holding me as security, & only giving them supplies on my written order and allowing me 10% on the amounts of their acc's, and for whatever I needed to run my own squad he was to let me have at cost & carriage, with 15% added. I made a bargain for $4,000 *dollars*, which will take to run the place at the price of grain & provisions, & the only reason I did not remit the $1,500 *dollars* was on account of the high water. Charley was not willing to send it until we saw whether the Bass levee would break or not.

On the 4th of February Mr. W. B. Keene started for New Orleans to make his arrangements for advance to cultivate 2,500 acres land. He returned on the 25th Feb'y unable to get advance for only 1,500 acres. He sent for me the following day after his return, & notified me it would be impossible for him to carry my business.

There I was with 20 head mules & all the hands without meat, bread, & grain for the mules. I immediately went to J. Stien & Co. for help. He had just returned from the city, & — the high water & high prices & (page 4th) rain & bad condition of land and affairs in general would not take the business. I went to three merchants in Lake Providence, and they were unable to make arrangements for themselves and what they had already promised.

68 I wrote to these firms in New Orleans; their ans. was they were not taking any new business. There I was. Lots of work already done, and could go no further.

I went then to see Charley. As soon as he saw me he said, Well, I suppose you have come after the $1,500 to send to Mr. Mendenhall. He says, Here it is.

I then stated the matter of affairs to him. We talked the matter over, and did not see any way to do but quit and give up in dispair. Finally we saddled our horses and rode 27 miles to Mr. Stein's store and asked him again for help. He declined unless we could give security. That was impossible. So the only show we had was to offer him what money we had & make that run us until the water went down, & he agreed to take the business upon those terms. (5th page.) So we deposited the money we had and am going ahead, and I can assure you it has given me a heap more pain than it has you; and one more thing I can assure you: I am going to attend strictly to business *to business*, and am going to get as little as possible and work to best advantage, and I know this fall will be able to make you a payment that will satisfy you. My aim is to pay you the $2,500 this fall without a doubt; with what I have left out of the place & what Charley will be able to raise then we can do it like a flash, and to do it now will be a stop to all things.

69 S. W. Davis, one of our firm neighbors, was unable to make arrangements in New Orleans, and everybody supposed he was solid.

I don't ask you to believe one word I write; I will refer you to Mr. Benjamin W. B. Keene & Mr. Burney.

So, under the circumstances, I am not going to be able to pay one dollar now, & if it don't suit you I cannot, for the life of me, help it. If you had rather resort to law, all right. If not, wait until fall with patience and I am sure everything will be made all O K.

(6th page.) The river has fallen 6 inches in last four days and is still falling, & work is going on all the same & will continue to. Everybody predicts a good crop year.

Has Mrs. M. received my package of photos? I mailed them & wrote her a letter some months ago.

Hoping you will have compassion upon a poor soul, I will close, by subscribing myself,

Very respectfully, yours, CLARK N. HALL.

P. S.—I want you to bear in mind that if W. B. Keene had not failed to comply with his contract I would surely have remitted the money. You may believe this or not, nevertheless it is the candid truth.

CLARK N. HALL.

70 Filed Jan'y 11th, 1886.

J. B. BEATTIE, *D'y Clerk.*

(Letter.)

GLENMARY PLANTATION, LA., *March 5th*, 1882.

J. H. Mendenhall, Esq., Delaware, Ohio.

DEAR SIR: I take the liberty to pen you a few lines in regard to Concord and the business pertaining thereto.

Some time ago Clark took the trouble and expense upon himself to go up and see you to try and effect a settlement.

At that time you could just as well as not have had $2,500.00 in cash; but it appears you would not take that. Well, since then things have changed here, so that it is agoing to be impossible for us to do anything until, say, Jan'y 1st, 1883, for the following reasons, viz: W. B. Keene, a merchant doing business close to Concord, had arranged to supply Clark this year, but about two weeks ago failed in a manner; anyway his commission merchants in N. O. say they (2nd page) *they* will not advance him supplies for more than enough to run his own place; therefore it will necessar-y compel us to take our money to run the place. I presume Clark has written
71 you about this ere now, and also that he had rented Andrews' portion of the place.

You can certainly see that it would be of no use to pay you the amount agreed to and then have no way or means of running the place, for we could make no other payments, as the place would lay idle & would therefore bring in no revenue.

The way everthing is now fixed the place will bring it in rent. I am here working for $1,000.00 a year and all my expenses paid, and by January 1st, 18-3, we can & will pay you $2,500.00. I have been here for two years and have saved nearly all my salary—and for (3rd page) what? To try and help Clark pay you for the place. I am anxious to settle this matter up, and you have been very kind in waiting as long as you have, & you have my word and honor that you shall be paid this fall the $2,500.00 if the levee does not break at or near Concord.

You can satisfy yourself by writing to Mr. Benjamin Keene or any one that knows anything about our affairs here, whether I have written how things are here or not.

And I feel safe in here saying that you will look at this matter just as I have, and think we have done just the best — could have been done under the existing circumstances.

72 Please let me hear from you on this subject and I shall take pleasure in keeping you posted about things here, and you can depend on my doing all I can to help pay up (4th page).

Please remember me kindly to Mrs. M., and with best wishes and trusting to hear from you ere long,

I remain yours resp., CHAS. F. HALL.

P. O. address, Pitchers Point, La.

Filed Jan'y 11th, 1886.

J. B. BEATTIE,
D'y Clerk.

EXHIBIT A. Offered in evidence by defendants.

HORACE M. VANCE and JOSEPH O. GREGG, Partners Doing Business under the Firm Name of "Elkhart Wood Pulp Co.," Plaintiff-,
vs.
JOHN H. MENDENHALL, NORMAN D. PERRY, Andrew J. Clark, and Jacob L. Kline, Partners Doing Business under the Firm Name of Delaware Paper Company, Defendants.

No. 100. Doc. 3, p. 222.

April 24th, 1876, the said plaintiffs, by their attorneys, Reid
73 & Powell, filed herein their bill of particulars, which is a note dated Feb'y 1st, 1876, due April 4th, 1876, and signed by defendants, for 240$.

Amount claimed, $240.00, and interest thereon from April 4th, 1876.

Same day summons issued for defendants to appear and answer April 28th, 1876, at nine o'clock a. m., and delivered to D. Sharadin, constable.

April 28th, 1878.—Summons returned, indorsed as follows:

Received this writ April 24th, 1876, and served the same on John H. Mendenhall and Andrew J. Clark by leaving copies.

Constable fees: Services 50; copies, $1.00; mileage, .55.=$2.05.

D. SHARADIN, *Constable.*

April 28th, 1878.—At the request of the defendants, the plaintiffs not appearing, this cause is adjourned to May 12th, 1876, at nine o'clock a. m.

May 12th, 1876.—The defendants came not at the hour named in the adjournment nor for one hour thereafter, whereupon I proceeded to an examination of the proofs on file, and, being fully satisfied therewith, it is on said day considered and adjudged by me that said plaintiffs, Horace M. Vance and Joseph O. Gregg, partners doing business under the firm name of Elkhart Wood Pulp Company, recover of said defendants, John H. Mendenhall and Andrew J. Clark, partners doing business under the firm name of Delaware Paper

Company, on said note said sum of $240, two hundred
74 and forty dollars, and interest on the same from April 4th, 1876, and costs taxed as follows:

Justice, to iss. sum's, $1.00; filing 2 papers, 10c.; continuance, 20c.; entering judgment, 40c.; satisfaction, 20c.; record, 75c.	$2 65
Constable fees, to serving summons	2 05
Total	$4 70

O. C. CARRGILL, *J. P.*

THE STATE OF OHIO, }
Delaware County, Delaware Township, } *ss:*

I do hereby certify that the above is a full and true copy from my docket of the proceedings had by and before me at my office in said township in the above action.

I do further certify that there has been nothing paid on said judgment and no appeal or stay was taken.

August 23rd, A. D. 1878.

O. C. CARRGILL,
Justice of the Peace.

J. P., to transcript (p'd by T. E. Powell)	$1 00
Justice fees	2 65
Constable "	2 05
	$5 70

DELAWARE, OHIO, *August 27th*, 1878.

For value received, we hereby assign, sell, transfer, and set over the above judgment, and all our rights, interest, claim, and demand therein, to James Andrews, his heirs & assigns.

ELKHART WOOD PULP COMPANY,
75 By REID & POWELL,
Their Attorneys and Agents in Fact.

UNITED STATES OF AMERICA, OHIO,
OFFICE OF THE SECRETARY OF STATE.

I, Milton Barnes, secretary of the State of Ohio, do hereby certify that O. C. Carrgill, whose attestation is attached to foregoing instrument, was at the date of such attestation a justice of the peace within and for the county of Delaware; that he is the proper officer to take such attestation, and that his official acts are entitled to full faith and credit.

In testimony whereof I have hereunto subscribed my name and affixed the great seal of the State of Ohio, at Columbus, the 3rd day of December, A. D. 1878.

[SEAL.] MILTON BARNES,
Secretary of State.

LAKE PROVIDENCE, LA., *May* 9, 1879.

For value received, I hereby assign, sell, and transfer and set over the above judgment and all my right, interest, claim, and demand therein to Clark N. Hall, his heirs and assigns.

JAMES ANDREWS.

Endorsed: Elkhardt Wood Pulp Company, plaintiffs, *vs.* Delaware Paper Company, defendants. Transcript. Filed Jan'y
76 11th, 1886. J. B. Beattie, d'y clerk.

EXHIBIT "B." Offered in evidence by defendant.

HORACE M. VANCE and JOSEPH O. GREGG, Partners Doing Business under the Firm Name of Elkhart Wood Pulp Company, Plaintiffs.
vs.
JOHN H. MENDENHALL, NORMAN D. PERRY, Andrew J. Clark, and Jacob L. Kline, Partners Doing Business under the Firm Name of Delaware Paper Company, Defendants.

No. 111. Doc. 3, page 244.

May 8th, 1876.—The said plaintiffs, by their attorneys, Reid and Powell, filed herein their bill of particulars, which is an acceptance for $300.00, dated March 1st, 1876, at 60 days.

Amount claimed, $300.00.

Same day summons issued for defendants to appear and answer May 12th, 1876, at ten o'clock a. m., and delivered to J. G. Oldham, constable.

May 10th, 1876.—Summons returned, indorsed as follows:

Received this writ May 8th, 1876, and served the same on the same day of May, 1876, by giving a certified copy of this to defendant Mendenhall; May 9th left a copy at the residence of defendant
77 Clark, other defendants not being found in my jurisdiction.
Constable fee: Services, 50; copies, $1.00; mileage, 20c.—$1 70.

J. G. OLDHAM, *Constable.*

May 12th, 1876.—The defendants came not at the hour named in the summons nor for one hour thereafter, whereupon I proceeded to an examination of the proofs on file; and, being fully satisfied therewith, it is, on said day, considered and adjudged by me that said plaintiffs, Horace M. Vance and Joseph O. Gregg, partners doing business under the firm name of "Elkhart Wood Pulp Company," recover of said defendants, John H. Mendenhall and Andrew J. Clark, partners doing business under the firm name of Delaware Paper Company, on said bill of exchange said sum of three hundred dollars, $300.00, and costs taxed herein as follows:

Justice, to iss. summons, $1.00; filing 2 papers, 10c.; entering judgment, 40c.; satisfaction, 20c.; record, 75c.	$2 45
Constable, to serving summons	1 70
Total	$4 15

O. C. CARRGILL, *J. P.*

THE STATE OF OHIO, }
Delaware County, Delaware Township, } *ss:*

I do hereby certify that the above is a full and true copy from my docket of the proceedings had by and before me at my office,
78 in said township, in the above action.

I do further certify that there has been nothing paid on said judgment and no appeal or stay was taken.

O. C. CARRGILL,
Justice of the Peace.

August 23rd, A. D. 1878.

Justice, to transcript (paid by T. E. Powell)	$1 00
Justice fees	2 45
Constable fees	1 70
	$5 15

DELAWARE, OHIO, *August 27th*, 1878.

For value received, we hereby assign, set over, and transfer all our right, interest, claim, and demand in and to the above judgment to James Andrews, his heirs and assigns.

ELKHART WOOD PULP COMPANY,
By REID & POWELL,
Their Attorneys and Agents in Fact.

UNITED STATES OF AMERICA, OHIO,
OFFICE OF THE SECRETARY OF STATE.

I, Milton Barnes, secretary of state of the State of Ohio, duly hereby certify that O. C. Carrgill, whose attestation is attached to the foregoing instrument, was at the date of such attestation a justice of the peace within and for the county of Delaware; that he is the proper officer to take such attestation, and that his offi-
79 cial acts are entitled to full faith and credit.

In testimony whereof I have hereunto subscribed my name and affixed the great seal of the State of Ohio, at Columbus, the 3rd day of December, A. D. 1878.

[SEAL.] MILTON BARNES,
Secretary of State.

LAKE PROVIDENCE, LA., *May 9th*, 1879.

For value received, I hereby assign, set over, and transfer all my right, interest, claim, and demand in and to the above judgment to Clark N. Hall, his heirs and assigns.

JAS. ANDREWS.

Endorsed: Elkhart Wood Pulp Company, plaintiffs, *vs.* Delaware Paper Company, defendants. Transcript. Filed Jan'y 11th, 1886. J. B. Beattie, d'y cl'k.

80 EXHIBIT "C." Offered in evidence by defendants.

Note.

Doll's, 1,733.61. DELAWARE, O., *June 1st*, 1875.

[Vignette.] Twelve months after date we promise to pay to the order of Jacob A. Sharer seventeen hundred & thirty-three $\frac{61}{100}$ dollars at 8% interest per annum after maturity, value received. [Vignette.]

DELAWARE PAPER COMPANY,
J. L. KLEIN, *Sec.*

No. —. Due $\frac{1}{4}$ June, 1876.

Endorsed: Pay James Andrews without recourse on me. Jacob A. Sherer.

Endorsed: Jas. Andrews. Filed Jan'y 11th, 1886. J. B. Beattie, d'y cl'k.

Extract from the Minutes.

WEDNESDAY, *April 14th*, 1886.

Court met pursuant to adjournment.

Present: His honor Aleck Boarman, district judge, presiding.

J. H. MENDENHALL
vs.
CLARK N. HALL. } No. 45. In Equity.

Judgment for Complainant on Decree.

Decree.

J. H. MENDENHALL
vs.
CLARK N. HALL *et al.*

81 This cause coming on for hearing and the court considering the law and the evidence and the argument of counsel herein—

It is ordered, adjudged, and decreed—

That J. H. Mendenhall have and recover of the defendant, Clark N. Hall, the sum of five thousand one hundred and twenty-three ($5,123.00) dollars, with 8% per annum interest thereon from the 24th day of December, 1875, until paid, and the costs hereof, the above amount to be subject to a credit of thirteen hundred and forty $\frac{52}{100}$ ($1,340.52) dollars to date 1st Jan'y, 1879, and subject to a further credit of five hundred and forty-four $\frac{15}{100}$ —, with 8% interest per annum from April 4th, 1876, to date, and take effect from 9th May, 1879.

It is further ordered, adjudged, and decreed that complainants' demand for recognition of the mortgage and vendor's previlige claimed in his bill of complaint be rejected as in case of non-suit

without prejudice to his right to assert the same in a subsequent action, which is expressly reserved by this decree in his favor.

Done and signed in open court this 14th day of April, 1886.

(Signed) ALECK BOARMAN, *Judge.*

Endorsed: Recorded in Judgment B. "A," folio 33. Filed April 14th, 1886. J. B. Beattie, d'y clerk.

82 *Extract from the Minutes.*

FRIDAY, *April 30th*, 1886.

Court met pursuant to adjournment. Present: His honor Aleck Boarman, district judge, presiding.

J. H. MENDENHALL
vs.
CLARK N. HALL. } No. 45. In Equity.

On motion of solicitors for complainants, it is ordered that an appeal be allowed in this cause, the same made returnable into United States Supreme Court on or before the 2nd Monday of October, A. D. 1886, conditioned upon complainant entering into bond in the sum of three hundred ($300.00) dollars, conditioned according to law.

Bond of Appeal. Filed September 9th, 1886.

United States Circuit Court, 5th Circuit and Western District of Louisiana.

J. H. MENDENHALL
vs.
C. N. & CHAS. F. HALL. } No. 45. In Equity.

Know all men by these presents that we, J. H. Mendenhall, as principal, and J. F. Box, as surety, are held and firmly bound unto the defendants herein, their heirs and assigns, in the sum of three hundred dollars; for the payment whereof, well and truly to be made, we bind ourselves, our heirs and assigns, by these presents *in solido.*

83 The conditions of this bond are such that whereas in the above-styled suit a final judgment and decree was rendered by the hon. court in the above-styled suit against the above-bounden J. H. Mendenhall, from which he applied for and obtained at the same term of court at which said decree was rendered an appeal to the Supreme Court of the United States: Now, therefore, if said J. H. Mendenhall shall prosecute his said appeal with effect and he pays all costs, then this bond to be null and void; otherwise to remain in full force and virtue.

J. H. MENDENHALL,
Per J. S. BOATNER, *Att'y.*
J. F. BOX.

Sept. 27th, 1886.

Approved.
ALECK BOARMAN, *Judge.*

(Endorsed:) Filed Sept. 9th, 1886. J. B. Beattie, d'y clerk.

84 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Western District of Louisiana.

The President of the United States to Clark N. Hall, Esq., of East Carroll parish, State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to an order of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein John H. Mendenhall, of Delaware, Delaware Co., Ohio, is complainant and Clark N. Hall, of East Carroll parish, La., is defendant, to show cause, if any there be, why the judgment rendered against the said John H. Mendenhall, as in said order of appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 7th day of September, in the year of our Lord one thousand eight hundred and eighty-six.

ALECK BOARMAN, *Judge.*

Marshal's Return.

85 [Endorsed:] United States circuit court, western district of Louisiana. No. 45. John H. Mendenhall *vs.* Clark N. Hall. Citation.

On this the 5th day of October, A. D. 1886, personally appeared A. C. Gibson, U. S. marshal for the western district of Louisiana, before me, the subscriber, J. B. Beattie, deputy clerk of the United States circuit court, 5th circuit and western district of Louisiana, and makes oath that he delivered a true copy of the within citation to Judge John T. Ludeling, of the law firm of Ludeling & Stillman, att'ys of record in the case of John H. Mendenhall *vs.* Clark N. Hall, No. 45 on the docket of the U. S. circuit court, 5th circuit, western district of Louisiana, by handing the same to him in person, in the city of Monroe, La., on this the 5th day of October, A. D. 1886, and that at the time of such service he was the United States marshal for the western district of Louisiana.

A. C. GIBSON,
U. S. Marshal.

Sworn to and subscribed before me this, the 5th day of October, A. D. 1886.

[Seal U. S. Circuit Court for the Western Dist. of La.]

J. B. BEATTIE, *D'y Cl'k.*

86 In Supreme Court of the United States.

J. H. MENDENHALL
vs.
CLARK N. HALL *et al.* } No. 45.

Appeal from the circuit court of the 5th circuit, western district of Louisiana.

The plantiff and appellant respectfully moves this hon'l. court to reverse the judgments rendered in this cause by the circuit court for the following reasons:

1st. The ruling of the said circuit court in sustaining the demurrer & plea of multifariousness plead by Charles F. Hall, one of the defendants, was error in this, that said Charles F. Hall was a necessary party to the bill to foreclose a mortgage upon property of which he pretended to be owner & was in possession.

2ond. The court erred in refusing to recognize complainant's mortgage as against Clark N. Hall.

Wherefore complainant and appellant prays that the judgment herein be reversed and case remanded to be proceeded with according to law.

C. J. & J. S. BOATNER,
Solicitors for Complainants and Appellants.

[Endorsed:] J. H. Mendenhall *vs.* Clark N. Hall *et al.* Assignment of error & motion to reverse.

87 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Western District of Louisiana.

CLERK'S OFFICE.

I, J. B. Beattie, d'y clerk of the circuit court of the United States for the fifth circuit and western district of Louisiana, do hereby certify that the foregoing 83 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial — the case of J. H. Mendenhall *vs.* Clark N. Hall, No. 45 of the docket of the said court.

Witness my hand and the seal of said court, at the city of Monroe, this 5th day of July, A. D. 1886.

Seal U. S. Circuit Court for the Western Dist. of La.

J. B. BEATTIE,
Deputy Clerk.

I, Aleck Boarman, United States judge for the western district of Louisiana, do certify that J. B. Beattie, whose name is signed to the above certificate as deputy clerk of the circuit court of the United States for the fifth circuit and western district of Louisiana, was, at the time of signing said certificate, and is now, the deputy clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestation as such deputy clerk.

Given under my hand, at the city of Shreveport, in said district this 6th day of July, A. D. 1886.

ALECK BOARMAN, *Judge.*

Endorsed on cover: W. Louisiana C. C. U. S. No. 158. John H. Mendenhall, appellant, *vs.* Clark N. Hall. Filed October 12, 1886.

Office Supreme Court U. S.
FILED.
NOV 23 1889
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1889.

JOHN H. MENDENHALL,
Appellant,
vs.
CLARK N. HALL,
Appellee.
No. 158.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA.

BRIEF FOR APPELLANT.

JOHN JOHNS,
D. A. McKNIGHT,
Of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1889.

JOHN H. MENDENHALL, APPELLANT,
v.
CLARK N. HALL, APPELLEE.

No. 158.

Brief for Appellant.

CASE STATED.

John H. Mendenhall, the appellant, a citizen of Ohio, and residing in the town of Delaware, Ohio, December 24, 1875, sold and conveyed to the appellee, Clark N. Hall, his, the appellant's, undivided one-fourth interest in the Concord Plantation, in Carroll Parish, Louisiana, for $5,123. The appellee, Clark N. Hall, to provide for the payment of the purchase money, gave to appellant his three promissory notes to the appellant's order, two of them for $2,000, each payable on the 1st days of January, 1877 and 1878, the third for $1,123, payable January 1, 1879, each bearing eight per cent. interest per annum until paid, interest payable annually, and secured their payment by a mortgage and special hypothecation to the appellant of the land sold the appellee, which mortgage and hypothecation, in which the appellee binds

the actings and doings of Clark N. Hall and his brother, Charles F. Hall, acting for him in the transaction were a fraud and deception practised by them on the appellant; that the tax, sale is, under the Louisiana laws, null and void, and that Charles F. Hall, cannot claim any benefit from the tax sale as he had become bound to the appellant for part of the purchase money.

After the special prayer above mentioned there is the prayer for general relief, and the bill expressly waives answer under oath by the defendants.

The defendant, Charles F. Hall (pp. 5 and 6), filed a demurrer for multifariousness and a plea setting up as a defence the tax deed to him from the sheriff (for copy of which see pp. 9, 10 and 11 of the record); that it was *prima facie* valid under the Louisiana laws, and could not be set aside without a previous tender to the purchaser of the price paid and ten per cent. per annum thereon being made. Neither demurrer nor plea of Charles F. Hall was sworn to, (as required by rule No. 31 in courts of equity), but being set for a hearing were allowed (pp. 11 and 12 of record), and on May 12, 1885, the bill, in so far as it related to or affected the defendant, Charles F. Hall, was dismissed without prejudice, &c.

From this decree rendered May 12, 1885, there was no appeal taken, though in the assignment of errors (p. 42) and motion in this Court for reversal, this Court is asked to reverse it. But there is no citation to the defendant Charles F. Hall.

The appellee (Record, p. 6) filed a plea to the jurisdiction, which was not sworn to as required by Rule 31.

It nowhere appears from the record that this plea was ever passed on by the court. But on page 12 of the record it appears that a demurrer filed by the defendant, Clark N. Hall, was overruled; as there is in the record no demurrer

of the defendant, Clark N. Hall, this must be a clerical error and must refer to the plea of Clark N. Hall.

The answer of the appellee, which is not sworn to, the oath being waived, does not deny the sale and conveyance of the undivided one-fourth, the consideration therefor, the notes given, the mortgage, the partition between appellee, James Andrews, and the other co-owner, that appellant is the owner and holder of the notes, but claims that a payment made by appellee thereon of $1,340.52 should have been applied on the note first due; that the whole $5,123 with interest from January 1, 1879, is due except in so far as appellee claims that the payment of the $1,340.52 by appellee should have been applied on the note first due instead of to the interest on all three notes—does not deny the delay and indulgence granted appellee by appellant, or that early in 1882 appellee specifically promised appellant soon to make a part payment on the notes, and that instead of making that payment as agreed on, the appellee and his brother, Charles F. Hall, March 5, 1882, wrote letters to the appellant stating that it was impossible to make it, but that if appellant would extend the time for that payment till the fall of 1882 a payment of $2,500 on the debt would be made. The answer does not specially deny the specific charges in the bill, that those letters of the appellee, Clark N. Hall, and his brother, Charles F. Hall, each dated March 5, 1882, were fraudulent devices on their part to gain time and further indulgence on the debt. The pact *de non alienando* is not denied, nor the charge that appellee fraudulently failed to pay the taxes for 1877 and 1878, nor that appellee told appellant that he, the appellee, had paid all the taxes due on the land, whilst both appellee and Charles F. Hall well knew those taxes were not paid and that the land would be sold for their non-payment, and that the sheriff did sell the land for those very taxes. The specific

charge that the appellee and his brother, Charles F. Hall, intending to defeat and destroy appellant's rights in the matter and release the mortgage, agreed that Charles F. Hall should, at the tax sale, bid in the land and take a tax-deed to it in his, Charles F. Hall's, name, is not specifically, but only generally, denied in a general traverse of "all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged." Nor is the specific charge of the bill that, though Charles F. Hall pretends to have bought the place and claims to be the owner, that the appellee still lives on it and cultvates it as before, *i. e.*, before the tax sale, appellee merely states that he is no longer the owner of the land, nor has he its possession, and that the land had been sold for taxes. The answer further alleges that appellee is the lawful owner and *bona fide* possessor of two judgments rendered by a justice of the peace of Delaware county, Ohio, in favor of the Elkhart Wood Pulp Company *v.* Appellant, Andrew J. Clark and others, as partners under the firm name of Delaware Paper Company, one for $300 and $4.15 costs, the other for $240 and $4.70 costs (for copies of which see Record, pp. 35, 36, 37, and 38), both of which judgments were assigned by the plaintiffs before the justice to James Andrews, one of the appellee's co-owners in the plantation, and by James Andrews assigned May 9, 1879, to the appellee; also, further, that the appellee is the legal holder and owner of a note for $1,733.61 of the Delaware Paper Company, signed by its secretary, J. L. Klein, due June 4, 1876, payable to Jacob A. Sharer's order, endorsed by Sharer to the same James Andrews "without recourse," and by James Andrews endorsed in blank, which note appellee took from Andrews "in due course of trade." Answer avers appellant is bound for the payment of the judgments and note, and that appellant acknowledged them to be due and correct in 1882.

The appellant replies generally, and denies specially that he is at all bound for the payment of the obligations set up and declared on in appellee's answer, denies that appellee owns the judgments and note, and avers that appellee is estopped from claiming or pleading the extinction of the debt due appellant, as March 5, 1882, appellee wrote him a letter (for copy of which see Record, pp. 32, 33 and 34) recognizing and acknowledging his debt to appellant, and begged for indulgence, which appellant granted him.

A "supplementary and amended replication" is filed by appellant alleging that the note, which appellee sets up in his answer and alleges that the appellant is bound to pay, was executed and obtained by fraud and without consideration, never negotiated until after its maturity; that it was not a just debt against the Delaware Paper Company, which is insolvent, and that it never has been presented to the syndic or assignee of the company for payment, that appellee paid no consideration for it, and that he has no right to compensate or set-off the debt due appellant with that note. And appellant further replied that the credits on the notes were placed on them at the instance, in the presence, and at the request, of the appellee.

There is no rejoinder or traverse to the replication or "supplementary" replication.

The depositions of Jacob A. Sharer, the payee of the note for $1,733.61 of the Delaware Paper Company which James Andrews endorsed to appellee, and of the appellant were taken (pp. 16, 17, 18, 19, 20, 21, 22, of Record), the cause was set for hearing, and heard on (p. 26) January 11, 1886. On April 14, 1886, the court below decreed (see pp. 39 and 40 of the Record) that appellant have and recover of the appellee $5,123, with eight per cent. per annum interest thereon from the 24th day of December, 1875, until paid, and the costs of the suit, that amount to be subject to a

credit of $1,340.52 to date, 1st January, 1879, and subject to a further credit of $544.15, with eight per cent. interest per annum from April 4, 1876, to date, and take effect from May 9, 1879; and further decreed that appellant's demand for recognition of the mortgage and vendor's privilege be rejected as in case of a non-suit, without prejudice to his right to assert the same in a subsequent action, which is expressly reserved by this decree in his favor. From this decree the plaintiff below, John H. Mendenhall, appeals, assigns as error that the court below erred in refusing to recognize appellant's mortgage as against the appellee, Clark N. Hall, and prays that the decree of the court below be reversed (see Record, p. 42).

The facts as they appear from the record are that Mendenhall, on December 24, 1875, sold Clark N. Hall his land, and took a mortage thereon to secure the payment of the notes given for the purchase money, which mortgage contained the pact *de non alienando*. The notes, two for $2,000 each, and one for $1,123, each bearing eight per cent. annual interest, fell due on the 1st day of January, 1877, 1878, and 1879, respectively.

Though the appellee, Clark N. Hall, had in the pact *de non alienando* in the mortgage bound himself not in anywise to encumber the property to the prejudice of the mortgage, he permitted the taxes for 1877 and 1878 to remain unpaid, and after they were due never told the appellant, Mendenhall, as he was in duty bound to do, that they were unpaid and an encumbrance to the mortgage, but concealed that encumbrance from the mortgagee and vendor.

Both the appellee and his brother, Charles F. Hall, who lived in the neighborhood, must have known of the nonpayment of those taxes and that the lands would be sold on account of such failure to pay them.

Up to November 18, 1878, Clark N. Hall had made no payment on the notes, no part of the principal or interest. On that day he paid Mendenhall, the appellant, $1,340.52, the exact amount of the interest due on the three notes up to January 1, 1879, and requested and instructed Mendenhall to apply that payment to the interest on the notes to that date, which Mendenhall did in Clark N. Hall's presence. (See page 22 of Record, Mendenhall's answer to interrogatories 2, 3, 4, and 5; and credits of the notes, pp. 24 and 25 of the Record.)

On May 9, 1879, the appellee gets from his co-owner in "the gin-house, store-house, windmill, &c.," on the Concord plantation, James Andrews (see partition deed, p. 30 of Record), assignments of the two judgments alleged to have been rendered against the Delaware Paper Company, an insolvent firm of which Mendenhall had been a member, by an Ohio justice of the peace (see pp. 35, 36, 37, 38). And it is fairly presumable that as the note for $1,733.61 of the same company, which the appellee says in his answer he was "the lawful owner and *bona fide* possessor of," as well as of these judgments (see answer, pp. 12 and 13), was obtained from James Andrews, the assignor to the appellee of these judgments, at the same time the judgments were assigned, and were a part of the same "trade" with Andrews the appellee mentions in his answer (p. 13). All three of which "compensations" or set-offs are new matter in appellee's answer and are specifically denied in appellant's replication and amended replication (pp. 14 and 15).

About the first of the year, the appellant alleges, Mendenhall still indulging Clark N. Hall, the latter went to Mendenhall's home in Ohio, and there and then promised Mendenhall that he, Clark N. Hall, would on his return to Louisiana make Mendenhall a payment of $1,500 on the notes (see p. 2, the 8th paragraph of bill), and this statement of

the appellant is corroborated somewhat by the letter of appellee to his brother, Charles F. Hall, dated March 5, 1882 (pp. 32, 34).

No such payment was made as promised, and on March 5, 1882, the appellee writes a letter from the plantation to the appellant (p. 32 of the Record), making various excuses for not making the promised payment of $1,500, promising Mendenhall to pay him $2,500 on the debt in the fall of 1882, and assuring him that he, Clark N. Hall, could and would keep that promise and make that payment "without a doubt," and saying, "So, under the circumstances, I am not going to be able to pay one dollar now, and if it don't suit you, I cannot for the life of me help it. If you had rather resort to the law, all right. If not, wait until the fall with patience and I am sure everything will be made *O. K.*" (p. 33). And concludes by a sort of prayer to his indulgent creditor for general relief as follows:

"Hoping you will have compassion on a poor soul," &c.

On the same day, March 5, 1882 (pp. 34 and 25), the appellee's brother, Charles F. Hall, in appellee's behalf, pleading for time, writes a letter to Mendenhall from a neighboring plantation, to quote his words, "in regard to Concord and the business pertaining thereto," saying that some time ago Clark N. Hall had been to see appellant to effect a settlement of the business, and that at that time Mendenhall could have gotten $2,500, but that he would not take it, and saying in effect that now things have so changed that no payment on the notes could be made before January 1, 1883.

In this letter Charles F. Hall says, "I presume Clark has written to you about this ere now," &c. He promises that Mendenhall shall have by January 1, 1883, a payment of $2,500 on the notes. He writes, to quote his words, that he, Charles F. Hall, will "try and help Clark pay you for

the place. I am anxious to settle this matter up, and you have been very kind in waiting as long as you have, and you have my word and honor that you shall be paid this fall the $2,500 if the levee does not break at or near Concord." Whether the levee broke or not does not appear. Charles F. Hall concludes this letter by telling Mendenhall, "I shall take pleasure in keeping you posted about things here," &c. But he fails to post him as to the taxes for 1877 and 1878 being unpaid.

No payment was made as promised by the appellee or his brother for him in the fall of 1882, but on the 4th day of November, 1882, the land mortgaged was advertised by the sheriff, the *ex-officio* tax collector of Carroll Parish, for the delinquent taxes of 1877 and 1878, which the appellee and his brother knew when they wrote those letters of March 5, 1885, were overdue, and for the non-payment of which they knew the land would be sold in January, 1883. And on January 17, 1883, the sheriff sold for the delinquent taxes of 1877 and 1878 the property of Clark N. Hall, the appellee, on which there was a mortgage to secure the purchase money, with a pact *de non alienando*, and Charles F. Hall bid in the property and took a tax deed therefor from the sheriff. The consideration of the sheriff's deed to Charles F. Hall is $211.47, the taxes due and interest thereon being $169.24, the balance cost of sale. The purchase money due under the mortgage at date of sale was $5,123, with interest thereon to January 1, 1879.

Error Assigned.

The Court erred in refusing to recognize and enforce the appellant's mortgage in full and as paramount to and having precedence over any claim that could be asserted under

the deed of the sheriff of January 17, 1883, in which Charles F. Hall is named as the grantee or vendee.

ARGUMENT.

First. The facts show that Charles F. Hall, in the efforts of his brother, the appellee, Clark N. Hall, to save the plantation from being sold in 1882 under appellant's mortgage and the appellee's right to it forfeited, acted for and in behalf of Clark N. Hall, and was Clark N. Hall's agent, and that he so dealt with appellant.

Second. That so acting for and in behalf of Clark N. Hall, Charles F. Hall and the appellee made to Mendenhall, the appellant, statements and promises prior to the tax sale with a view to induce the appellant not to foreclose his mortgage before the fall of 1882, or before the beginning of the year 1883, and that the appellant, relying on these statements and promises deliberately made to him, Mendenhall, and induced thereby, did, to his detriment, delay and defer taking proceedings to enforce and foreclose his mortgage till after January 1, 1883.

Third. That in making those statements and promises, Clark N. Hall and Charles F. Hall, the latter acting for and in behalf of his brother, the appellee, were guilty of and practised gross deception on the appellant, designedly for the destruction of appellant's rights.

Fourth. A mortgage creditor may proceed directly against the property subject to his mortgage, even though the property may have been sold for taxes and the tax title be in the name of a third person, when it appears from the evidence that such title is a fraudulent simulation and that the original mortgage debtor, who had colluded with the purchaser at the tax sale, is still the real owner of the property.

Fifth. The evidence and attendant circumstances show that the actings and doings of the appellee and his brother, Charles F. Hall, who acted for and in behalf of the appellee in the matter, were fraudulent devices to deceive and cheat the appellant, and that they colluded to defraud him out of his money, and that the title under the tax deed to Charles F. Hall, the appellee's agent, is, as the bill alleges, a simulation and an attempted wrong which a court of equity will interpose to prevent.

Sixth. The judgments of the justice of the peace in Ohio against a firm of which the appellant was a member, and which appellee claims to be the legal and *bona fide* owner of, are not proper set-offs to the appellant's claim under the notes and mortgage.

On the first Point.—After the appellee had on November 18, 1878, paid appellant the exact amount of interest due for the three years on the three notes and had it credited on them in his presence and at his request (pp. 22, 24, and 25, answers to 2d, 3d, 4th, and 5th interrogatories in Mendenhall's deposition), but which payment, in his answer (p. 13), appellee alleges should properly have been credited to the first note; after he had on May 9, 1879, through his co-owner James Anderson, gotten hold of those Ohio magistrate's judgments for $544.15, and that fraudulent note for $1,733.61 (pp. 35, 36, 37, 38, and 39; letter of Andrews, p. 24; and Sharer's answers to 11th, 15th, and 28th interrogatories, p. 21), which he supposed he could set-off against the debt he owed the appellant, he still found he could not, even if these amounts were deducted from the mortgage debt due Mendenhall, pay the difference to his creditor.

His liberal creditor, though no interest had been paid for three years, in 1882 had taken no measures to foreclose. Then it was, on March 5, 1882 (pp. 32, 33, and 34), that

the appellee wrote from Concord plantation, to the appellant, setting forth, in detail, his difficulties in getting money and means to cultivate the plantation, making excuses for not sending appellant the money he had promised at the beginning of the year 1882, and assuring that it was then impossible to pay appellant a single dollar, but that if appellant would wait till the fall of 1882 he would pay him $2,500. All through his letter appellee refers to his brother, Charles F. Hall, as being consulted by, assisting, and acting for him. The two brothers were as one in trying to save the plantation for the appellee. But appellee writes, "Charley was not willing to send it" (*i. e.*, the $1,500 which Charles F. Hall agreed, so appellee wrote, to loan him) "until we saw whether the Bass levee would break or not." Thereupon the same day, March 5, 1882, Charles F. Hall writes from a neighboring plantation, beyond question with his brother's cognizance, and at his instance, to Mendenhall "in regard to Concord and the business pertaining thereto," and in his brother Clark's behalf to save the plantation from being sold under the mortgage. He corroborates the statements made by his brother Clark in his letter of the same date, makes almost identically the same excuses that Clark in his letter made, almost identically the same promise of a payment of $2,500, except that instead of "in the fall," Charles says in one place, "by January 1, 1883," and afterwards in another place, "this fall."

It is impossible that this letter of Charles F. Hall to Mendenhall could have been written otherwise than at the request of his brother, Clark N. Hall, with the object and view of saving the plantation from sale under the mortgage, and, sticking to the appellee "like a brither," he evidently was determined to do anything to get Clark rid of that mortgage, and was Clark's most zealous and active adviser and agent "in the business pertaining to" the Concord

plantation, on which he wrote the appellant in his brother's behalf. It is apparent that Charles F. Hall was thus, in the spring of 1882, acting in trying to save the plantation for his brother, Clark N. Hall.

The next act in which Charles F. Hall figures is the tax-sale of the property. Clark N. Hall and Charles F. Hall must have known that the taxes were due and the property would be sold for taxes.

Finding it impossible to pay the mortgage debt, and the property being advertised November 4, 1882 (p. 9), as they knew it would have to be for the unpaid delinquent taxes, Charles F. Hall again comes to the front and bids it in, taking the title in his own name. We submit that on the record, the evidence, and the circumstances attending the whole business, it is apparent that in so doing Charles F. Hall acted for and in behalf of his brother, Clark N. Hall, the appellee, as he had acted in March, 1882, in securing from the appellant the extension till 1883.

His act under the sheriff's sale was, we submit, clearly a part and parcel of his endeavor, under Clark Hall's instructions throughout, to save the place from being sold under the mortgage.

That Charles F. Hall bought the place in at the tax-sale for his brother, the appellee, as his agent and with the appellee's connivance and collusion, we submit, is apparent from the evidence and attendant circumstances.

The vendee and mortgagor, the appellee, Clark N. Hall, certainly could not acquire a title adverse to his vendor, the mortgagee Mendenhall, by a purchase of the land at a tax-sale; nor could Charles F. Hall, acting for and in behalf of the vendee and mortgagor, become a purchaser for him at such sale.

On the second Point.—In the mortgage, with the pact *de non alienando*, signed by the appellee (pp. 28 and 29), the

appellee expressly promises and obligates himself that he will not "in any wise encumber said property to the prejudice of this act of mortgage." The appellant had a right to rely on these statements, promises, and stipulations of the mortgagor, to believe the statements to be true, and to rely on his promises and covenants. He did so rely on them the record shows, and indulged him, and the appellee, instead of concealing from Mendenhall the fact that the taxes were delinquent, should have informed him.

The appellee's statements were untrue, and he violated the pact *de non alienando* by permitting the taxes on the property for 1877 and 1878 to go unpaid and to become an encumbrance on the property to the prejudice of the mortgage.

The brother, Charles F. Hall, was just about as truthful as Clark Hall—*Arcades ambo!* In the letter of March 5, 1882, written to secure for Clark an extension, and in which he makes promises for his brother, the appellee, as to payments, &c., and pledges his word and honor that he will see them carried out, Charles F. Hall tells Mendenhall (p. 35) that he "shall take pleasure in keeping" him "*posted about things here*," *i. e.*, affairs at Concord, about which he is writing for and in behalf of Clark N. Hall.

Instead of keeping Mendenhall posted as he promised, he failed, when on Nov. 4, 1882, the land was advertised for delinquent taxes, to notify the unsuspecting, confiding, and generous creditor, who was relying on his statements and promises, and indulging his brother at his, Charles', request, that his rights were in danger. Instead of posting Mendenhall, living off in a distant State, in regard to it, he concealed it from him, and on January 17, 1883, pretended to buy the property at the tax sale and took the tax title in his own name. By these statements the appellant was induced to extend the time for the payment by the appellee and to defer the foreclosure, to his, the appellant's, detriment. Surely a

court of equity will not permit such a transaction as this, but "will enforce strict truth in the dealings of one man with another, so that if one makes a deliberate promise to another with a view to induce that other to do a particular thing or act, which, relying on such promise, he accordingly does, the promissor shall be compelled to make good his word." (M. R. in Loxley *v.* Heath, 27 Beavan, 532.)

"Where persons who have a duty to perform represent to those interested in the performance of that duty that it has been performed, they make themselves responsible for all the consequences of non-performance." (Blair *v.* Bromley, 5 Hare, 542; 2 Ph., 354.)

Here it was the appellee's bounden duty not to suffer an encumbrance to the prejudice of the mortgage. He obligated himself to pay the taxes; and if they were unpaid, he should in equity and good conscience have notified the vendor and mortgagee, Mendenhall, of the fact, for under the terms of the sale Mendenhall relied on and was entitled to rely on the vendee to do so. But Clark N. Hall failed to notify his vendor, who lived in a distant State, and who, he knew, trusted to his promises and statements. Charles F. Hall, when he writes in behalf of his brother, on March 5, 1882, asking Mendenhall to extend the time and defer the foreclosure, promises to keep Mendenhall posted about matters at the plantation. Relying on these promises, Mendenhall granted the extension asked and deferred the foreclosure. Here there was the concealment of a material fact from the mortgagee—the delinquent taxes—which fact both the writers of those letters of March 5, 1882, must have known, but kept from Mendenhall by them when they were begging for the extension, which Mendenhall gave them, and hat concealment in itself was a fraud. Crosby v Buchanan 23 Wall 420.

Those letters of the appellee and Charles F. Hall of March 5, 1882, in which the former writes Mendenhall that if he will wait till fall the appellee is "sure everything will be made O. K." (p. 33), and Charles Hall assures the appellant (p. 35) that he will keep him "posted about things here," *i. e.*, at the plantation, lulled Mendenhall into security and induced him to abstain from making inquiry and seeking information. In a similar case, almost identical with the present, Austin *v.* Citizens' Bank (30 La. An., p. 691), the Supreme Court of Louisiana say: "The debt," *i. e.*, the taxes, "being *exigeant* and of so high a rank, she should have acquainted her creditor and mortgagee with its imminence instead of observing the suspicious reticence that characterized her conduct."

Where a party has induced another to act on the faith of several representations made to him, any one of which has been made fradulently, he cannot set up the transaction by showing that every other representation was truly and honestly made (Reynell *v.* Sprye, 1 De G., M. & G., marg. p. 698).

On the third Point, in not telling Mendenhall the taxes for 1877 and 1878 had not been paid, in the stipulation with him that no encumbrance prejudicial to the mortgage would be allowed by the appellee, in the promise by the appellee's brother and agent, Charles F. Hall, that he would keep Mendenhall posted about the property, and in the purchase at the tax sale by the appellee's brother, plainly acting for him and in collusion with him to defraud the appellant of his rights, we submit that the appellee and Charles F. Hall were guilty of and practised the grossest deception on Mendenhall. To quote the language of the Supreme Court of Louisiana in giving judgment in the like case of Austin *v.* Citizens' Bank (*supra*): "The fraud and cozenage of the transaction is manifest at every stage of it." Certainly the

appellee cannot complain that the appellant too implicitly relied on the truth of what the appellee and his brother, acting for him, had stated (Dobell *v.* Stevens, 3 B. & C., 625).

On the fourth and fifth points, the case of Austin *v.* Citizens' Bank (*supra*), very similar to the present, we submit sustains these points fully. In that case the plaintiff's mother had, like Clark N. Hall, bought a plantation of the Citizens' Bank and gave a mortgage like the one in the present case.

The plaintiff's mother, the mortgagor, implored time and leniency of the bank, even after the tax sale of which she knew, just as the appellee and his brother Charles for him begged time and leniency of the appellant here after they knew of the delinquent taxes and the consequent lien on the property therefor. She asked for further delay without acquainting her creditor of the pretended alienation by a tax sale, for the purpose of deluding the bank, her son, the plaintiff, having already bought the plantation and taken a conveyance in his own name from a third party, who bid it in at the tax sale and took title to himself. In the present case, after the tax lien and encumbrance to the prejudice of the mortgage had accrued and arisen, the appellee and his brother, who knew that the taxes were not paid, were begging time and leniency from Mendenhall, who granted it. The Court say in Austin *v.* Citizens' Bank, *supra*, (page 691) that "No government will permit its machinery, constructed to enforce the payment of public dues to the fisc, to be used to manipulate a fraud, and, if the purchaser is a party to the fraud, he must share its punishment. It might be very different if he were wholly disconnected and unacquainted with the fraud." The Court go on to say that "the purchase by Moss," the middleman, "was nothing more nor less than a purchase by Mrs. Austin, the debtor and mortgagor, through her son, the plaintiff;" and gave judgment for the

bank, the mortgagee, saying: "The creditor's rights as mortgagee and vendor cannot be imperilled by the mortgagor's collusive combination with others to interpose an apparent, but fraudulent, obstacle in his way to enforce those rights."

This Court in Watson *v.* Bondurant (21 Wall., 129) say that the pact *de non alienando* relieves the plaintiff from the necessity of making the third person, who purchases, a party to the action, and in Avegno *v.* Schmidt (113 U. S., 293), and in Shields *v.* Schiff (124 U. S., 351), sustain the doctrine laid down by the Supreme Court of Louisiana in the case of Austin *v* Citizens' Bank, above cited.

On the sixth Point.—Those judgments of the Ohio justice of the peace (pp. 35, 36, 37, and 38), which appellee claims in his answer to be "the lawful owner and *bona fide* possessor of," (p. 12), and all liability for which appellant, by his replication (p. 14), denies, are neither proved nor authenticated so as to have any effect in Louisiana. (See Taylor *v.* Barron, 10 Foster, 78; Snyder *v.* Wise, 10 Barr, 157; Robinson *v.* Prescott, 4 N. H., 450.)

Even had these judgments been proved, a court of equity could not have allowed them as set-offs in the hands of appellee against the appellant's mortgage debt. Equity will not allow a set-off of a joint debt against a separate debt. (Story's Equity, Sec. 1437; Dade *v.* Irwin, 2 How., 383.)

There is no evidence in the record to prove the statement in defendant's answer that in 1882 appellant acknowledged those judgments to be true and correct.

It is respectfully submitted that it is shown by the record that the appellant's mortgage should be recognized and enforced without regard to the tax title of Charles F. Hall, which is manifestly a fraudulent simulation, and that the decree of the circuit judge should be reversed, and cause remanded with directions to enter a decree recognizing and

enforcing appellant's mortgage on the land without regard to the fraudulent and simulated tax title in the name of Charles F. Hall, as vendee and grantee, and with costs.

JOHN JOHNS,
D. A. McKNIGHT,
Counsel for Appellant.

The President of the United States to Charles F. Hall, or, if deceased, to his representatives, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the fourth Monday of March next, pursuant to an order filed in the clerk's office of the Supreme Court of the United States, entered in a cause wherein John H. Mendenhall is appellant and Clark N. Hall is appellee, a copy of which is hereunto annexed, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 18th day of January, in the year of our Lord one thousand eight hundred and ninety.

MELVILLE W. FULLER,
Chief Justice.

On this 13th day of February, in the year of our Lord one thousand eight hundred and ninety, personally appeared J. S. Ray before me, the subscriber, H. Moise, deputy U. S. clerk for the western dist. of Louisiana, and makes oath that he delivered a true copy of the within citation to Mrs. S. D. Hall, widow of Charles F. Hall & legal representative & administratrix of his estate, at her residence, in East Carroll parish, State of Louisiana, on the 31st day of Jan., 1890, and a true copy to Jno. T. Ludeling, her attorney, on the 6th Feb., 1890.

J. S. RAY,
Dep'y U. S. Marshal.

Sworn to and subscribed the 13th day *day* of Feb'y before me, the undersigned authority, 2, 13, A. D. 1890.

[Seal U. S. District Court for the Western Dist. of La.]

H. MOISE,
D'y Cl'k U. S. Court.

Supreme Court of the United States. October Term, 1889.

JOHN H. MENDENHALL, Appellant,
vs.
CLARK N. HALL. } No. 158.

It is ordered by the court that a citation to Charles F. Hall, or, if deceased, to his representatives, returnable on March 24, 1890, may be taken out and served.

It is further ordered that if said citation is not applied for within thirty days the case will be dismissed.

January 13, 1890.

[Endorsed:] Supreme Court U. S. 1889, October term. No. 158. Jno. H. Mendenhall, app't, *vs.* Clark N. Hall. Citation and proof of service on Mrs. S. D. Hall, widow of Chas. F. Hall & legal representative & administratrix of his estate.

[Stamped:] Office Supreme Court U. S. Filed Feb. 17, 1890. James H. McKenney, clerk.

Supreme Court of the United States.

JOHN H. MENDENHALL, APPELLANT,

VS.

CLARK N. HALL.

BRIEF FOR CHAS. F. HALL.

JOHN T. LUDELING, Counsellor.

MONROE, LA.,
Telegraph-Bulletin Job Print.
1890.

Supreme Court of the United States.

JOHN H. MENDENHALL, APPELLANT,

vs.

CLARK N. HALL.

I.

ABSTRACT, OR STATEMENT OF THE CASE.

The complainant alleged, in his bill, that Clark N. Hall purchased his undivided interest in a certain tract of land, in December, 1878, for $5,123.00, payable in three installments, annually, with 8 per cent interest from date, and secured by a special mortgage, which mortgage contained the pact *de non aliennando*. He alleged that he is still the owner and holder of the notes, secured by said mortgage, which he says are due and unpaid, except the interest up to January, 1879.

Complainant alleged that the *said property*, sold by him to Clark N. Hall, *had been sold by the sheriff and tax collector for taxes of 1877 and 1878*, due by Clark N. Hall. He alleges that this "*sale is null and void and conveys no title to the purchaser for the following reasons*, to-wit": Then follows the alleged causes of nullity. See bill at page 3 of printed record.

Complainant prayed "that the sale by the tax-collector" * * * "be annulled and set aside and decreed to be of no effect; that your petitioner's mortgage and vendor's privilege thereon be recognized and rendered executory and that the land be seized and sold by due process of law to pay and satisfy the same."

Chas. F. Hall, one of the defendants, filed a demurrer and also a plea to the suit against him. See Record p. 5.

Clark N. Hall filed a plea to the jurisdiction of the court of

equity on the ground that judgment against *him* is asked for on written obligations, and that the issues as to *him*, presented in this case, can only be tried by a court of law and *by a jury*.

The demurrer, and also the plea, filed by Chas. F. Hall, were sustained by the court; and the bill, as to Chas. F. Hall, was dismissed, reserving to complainant the right to bring a new suit.

See judgment and decree rendered and signed on the 12th of May, 1885. Record pp. 11 and 12. *No appeal was taken from this decree.* The plea filed by Clark N. Hall was overruled. And Clark N. Hall filed his answer, in which he avers that he "is no longer the owner of the land described in plaintiff's bill of complaint, nor has he the possession thereof, nor had he at the date of the institution of this suit; but he avers that said land was sold by the State of Louisiana through her tax-collector, for taxes, before the institution of this suit." R. p. 12. And he denies all unlawful combination and conspiracy charged against him in the bill. R. p. 13.

On the 14th of April, 1886, judgment was rendered against Clark N. Hall in favor of complainants, rejecting his demand for recognition of the mortgage and privilege as in case of non-suit. R. p. 39. This judgment was signed on April 14th, 1886.

On the 30th of April, 1886, on motion in open court, it was ordered that an appeal be allowed in *this* case. R. p. 40.

On the 27th of September, 1886, a bond was executed and filed. The bond recites that, "whereas in the above suit a final judgment and decree was rendered by the Hon. Court in the above styled suit against the above bounden J. H. Mendenhall, from which he *applied for and obtained at the same term of the Court, at which said decree was rendered, an appeal* to the Supreme Court of the United States; now therefore, etc." R. p. 40.

Subsequently, on the 5th of October, 1886, Clark N. Hall alone was served with citation of appeal. R. p. 41.

Chas. F. Hall died, afterwards.

On page 42 of Record is to be found a motion to reverse the *judgments* rendered in this case for the following reasons:

"1st. The ruling sustaining the demurrer and plea of Chas. F. Hall was wrong, because he was a necessary party to foreclose a mortgage upon property of which he pretended to be owner and was in possession;

"2nd. The court erred in refusing to recognize complainant's mortgage." R. p. 42.

II.

A BRIEF OF THE ARGUMENT.

It will be seen by reference to page 2 and 3 of the Record that complainant alleged in his bill that "Clark N. Hall is still living thereon (the property) and cultivating the plantation as before, which is in itself an evidence of fraud and simulation." Yet in the motion for renewal just referred to above, appelant contradicts this statement and states that *Chas. F. Hall was in possession*, and therefore was a necessary party. It is denied that a third possessor is a necessary party in a suit against the maker of mortgage notes, to obtain judgment against him.

Article 63, of the Code of Practice provides:

"The hypothecary action, like all real actions, follows the property to which it is attached in whatever hand it may be found, but it is subject to different rules, according as the property may be in the possession of the debtor, of his heirs, or of third persons."

Art. 63: "When the hypothecated property is in the hand of the debtor," (as is alleged in the bill) "and when the creditor, besides his hypothecary right, has against his debtor a title importing a confession of judgment, he shall be entitled to have the hypothecated property seized immediately and sold for the payment of his debt, including the capital, the interest and the costs, pursuant to the rules provided hereafter for executory proceedings."

Art. 68, Code of Practice, declares: "If the hypothecated property be neither in the hands of the debtor nor of his heirs, but in that of a third person, the creditor has his action *against that person*, in order to compel him either to give up the property

or pay the amount for which it stands hypothecated. This is the hypothecary action properly speaking."

"The executory process in matters of privilege and mortgage, may be pursued, not only against the debtor, or his heirs, but also against the third possessor of the thing subject to it *according to the forms* prescribed in the third paragraph, section second third chapter of the first part of this code."

Therefore, Chas. F. Hall was not a necessary party to the suit against Clark N. Hall to fix the amount of the indebtedness of Clark N. Hall. Neither was Clark N. Hall a necessary party to an hypothecary action against Chas. F. Hall.

Hence it was that the Circuit Court sustained the demurrer of Chas. F. Hall. He was not a party to the mortgage notes, nor was he *personally* sued to be made liable for their payment.

On page 9 of the record will be found sheriff's deed to Chas. F. Hall for the land sold at tax sale. It is perfect in form and on its face valid. Article 210 of the Constitution declares that "all deeds of sale made, or that may be made, by the collector of taxes, shall be received by the courts in evidence as *prima facie* valid sales."

The same article of the Constitution declares, that "no sale of property for taxes shall be annulled for any informality in the proceedings until the price paid, with ten per cent interest, be tendered to the purchaser."

In accordance with the provisions of the Civil Code, the Supreme Court of Louisiana, in a long line of decisions has held that it was a *prerequisite* to the institution of a suit to rescind a sale, that the purchaser should be paid the price given by him, or he should be tendered the price. Art. 1912 of the Civil Code declares: The effect of being put in default is not only that in contracts to give the thing, which is the object of the stipulation, is at the risk of the person in default; but in the cases hereinafter provided for, it is a *prerequisite* to the recovery of damages and of profits and fruits, or *to the rescission* of the contract."

In John C. Barelli vs. Emile Gauche, the Supreme Court said: "This plea in bar of the action must be sustained. No tender of

the amount paid by defendant is shown to have been made, and this, we think, was essential to enable the plaintiff to prosecute this suit." 6 N. S., 684; 8 N. S., 162, 175, 210; 3 La., 541; 12 An., 251; 21 An., 425 and authorities there cited. Revised Civil Code 1912." On application for rehearing the Court said: "Upon further consideration we are not inclined to change the judgment heretofore rendered by us in this case." Gormly vs. Palms, 13 An., 213.

A review of the decissions on this point was made in the case of Lolo Blanton vs. Ludeling et al, in 30 An., p. 1232. A peremptory exception was filed to this suit, as in this case, that no offer or tender had been made to defendant of the amount paid by him at the tax sales at which it is alleged, in the petition, he acquired titles, and which sums were applied to the payments of taxes and costs due. The Court said: "We prefer to place our decission upon the exception alone, which is no longer an open question."

In Miller vs. Montague and Husband, 32 An. La., p. 1290, the Supreme Court said: "Proceeding to consider what judgment should have been rendered, we admit the general principle, that *a party seeking to annul a tax title, prima facie* valid, *must first tender* to the purchaser reimbursement of the sums paid by him in discharge of his bid, and which enured to the benefit of the attacking party, and this principle would, perhaps, extend to proper taxes on the property paid by the purchaser while in possession." Blanton vs. Ludeling et al, 30 An., 1232, and Barrow vs. Lapine, 30 An., 310. In the last mentioned case it is further said: "And if this want of tender is pleaded in *limine*, and the amount is apparent or made to appear, *plaintiff should not be allowed to sue until it is tendered.*"

In this case, the complainant has never offered to return the price paid by Chas. F. Hall, nor has he alleged that he had done so, or was willing to do so. He had the right, under the law, to redeem the land, within a year after the sale. See recitals in the tax-collector's deed. R. p. 9. This suit was filed within the year succeeding the sale.

In obedience to the laws of Louisiana and in accordance with

its jurisprudence, the Circuit Court maintained the plea of Chas. F. Hall, and dismissed the suit as to him.

This judgment was rendered and signed on the 12th of May, 1885.

No allowance for an appeal from this judgment has been made. None has been asked for.

A motion for an appeal was filed on the 30th of April, 1886, at the term of the court when the judgment against Clark N. Hall was rendered.

The bond for an appeal given shows it was for an appeal from a judgment rendered at the April term 1886, and not from the judgment in favor of Chas. F. Hall, rendered nearly a year anterior.

In appellant's brief, p. 4, it is admitted that "From this decree, rendered 12th May, 1885, there was no appeal taken, though in the assignment of errors and motion in this Court for reversal, this Court is asked to reverse it. But there is no citation to the defendant Chas. F. Hall." If no citation is issued, the Record must show that the appeal was allowed in open court *during the same term* at which the decree was rendered. Vosant vs. Gas-light Co., 99 U. S., p. 213.

An allowance of an appeal, either expressly or by implication, is essential. The Supreme Court has no power to receive an appeal in any other mode than that provided by law. Vilobolas vs. U. S., 6 How. 81; U. S. vs. Curvy, 6 How. 106.

The Supreme Court has no jurisdiction unless the case is brought up in conformity with the regulations which Congress has prescribed. Castro vs. U. S., 6 Wall. 46.

If, by any possibility, the order of the Supreme Court directing the representative of Chas F. Hall to be cited can be regarded as an allowance of an appeal from the judgment in favor of Chas. F. Hall, then the appeal is barred by limitation.

"No judgment, or decree, or order of a circuit or district court, in any civil action at law or in equity, shall be reviewed on a writ of error or appeal unless the writ of error is brought, or the appeal is taken within two years after the entry of such

judgment, decree or order." Sec. 1008 of Statute Revised, June 1, 1872. Ch. 255, § 2, 17 Statutes 196. Brooks vs. Norris, 11 How. 204; San Pedro, 2 Wheat 132.

It is respectfully submitted that the record, as well as the admission made in appellant's brief already referred to, show that there has been no appeal taken as to Chas. F. Hall, and that the judgment in his favor has become *res judicata* by the expiration of the time within which an appeal might have been taken, and that this Court is without jurisdiction over the case as to Chas. F. Hall.

But, if this be not correct, then it is submitted that the evidence in this record shows that at a public sale for taxes Chas. F. Hall bought the lands mortgaged and paid the taxes then due and the costs and penalties, and that he has been in the actual possession of said lands and paid the taxes thereon since January, 1883, the date of the sale. The title is *prima facie* valid. Constitution, Art. 210.

There is no evidence to impugne the validity of that title. There is no evidence offered to prove fraud and conspiracy, except the letters from Clark N. Hall and Chas. F. Hall to Mendenhall. The complainant himself was a witness, but he did not testify to a single fact to establish fraud or conspiracy against either defendant.

The letters of Chas. F. Hall to Mendenhall is an excuse for Clark N. Hall's failure to pay the sum Clark N. Hall has promised, and a promise that Clark N. Hall and himself will pay $2500, *next fall*, *if* the levee does not break at or near Concord, that is, *if they make crops enough* to enable them to do so. Because that was the only source from which Clark N. Hall could get the means to pay. See the letter at page 34 of record.

Clark N. Hall's letter explains fully his situation to Meudenhall. He says, "So I am not going to be able to pay a dollar now, and if it don't suit you I cannot for the life of me help it. If you had rather resort to the law, all right, if not, *wait until fall* with patience and I am sure everything will be made all O. K." R. p. 33.

Surely there is nothing in these letters to indicate a purpose to conceal anything, or to defraud any person. What young man struggling to get out of debt, ever planted crops without the hope and expectation of making large crops and realizing large profits? How few planters ever realize their expectations? Is it a fraud to make promises on their expectations, after explaining fully the situation, truly?

It is said, in complainant's brief, that these representations were made to lull complainant into security to make him less watchful of his rights. This is mere suspicion—not proof.

The promises were to pay *in the fall.* If Mendenhall was thus induced to wait until fall, no injury resulted from that delay. The property was not *advertised* for sale till the 4th day of November, 1882. So that complainant had ample time to sue after the failure to pay the sum promised, even if complainant had bound himself "to wait until fall" by *accepting* the propositions of defendant—*which, however, he did not do*—and he could have stopped the sale by paying the taxes before 17th January, 1883. There was no concealment in the proceedings.

It is said also that Chas. F. Hall acted in the matter as Clark N. Hall's agent, &c. There *is no allegation of the kind in the bill*, and absolutely no evidence of the fact.

The complainant's brief says that Clark N. Hall "violated the *pact de non aliennando* by permitting the taxes on the property for 1887 and 1888 to go unpaid and to become an encumbrance on the property to the prejudice of the mortgage." R. p. 16.

This, it is respectfully submitted, is a mistake. The clause *de non aliennando* inserted in a mortgage in Louisiana does not impose any obligation on the mortgagor, either to do or not to do anything—it confers simply a right to the holder of the mortgage to pursue the property, whether in the possession of the mortgagor or of a stranger, *without resorting to the hypothecary action*, provided for by Art. 68 C. P.—*provided* the property has not been sold under a mortgage or privilege superior in rank to said mortgage.

When such a sale has been made, as was the fact in this case,

at the tax sale, then the *mortgage* with the *pact de non aliennando* is extinguished or destroyed.

There is no evidence that the offers of Clark N. or of Chas. F. Hall were accepted by Mendenhall—there is no evidence whatever to that effect, although Mendenhall testified in the case.

It is alleged in the brief that Chas. F. Hall must have known that the taxes were due on the place, and that he concealed the fact from Mendenhall. There is no proof that he knew the taxes were due, until the bid for the property at the sale, on 17th January, 1883, nor is there any proof that Clark N. Hall did not inform Mendenhall of the fact. There is no evidence that Clark N. Hall ever told Mendenhall that the taxes were paid. Complainant had one year in which to *redeem* the land from the purchaser.

This suit was filed on the 4th of September, 1883—the sale was made on the 17th of January, 1883. Plaintiff therefore had ample time within which to redeem, and he is guilty of *laches* in not doing so.

He also had the notice which every citizen had that the taxes were unpaid, by the filing of the delinquent lists in the recorder's office, and by the public advertisements made of the sale. See recitals in the tax title, R. p. 9.

Respectfully submitted,

JNO. T. LUDELING,
Counsellor.

Supreme Court of the United States.

OCTOBER TERM, 1888.

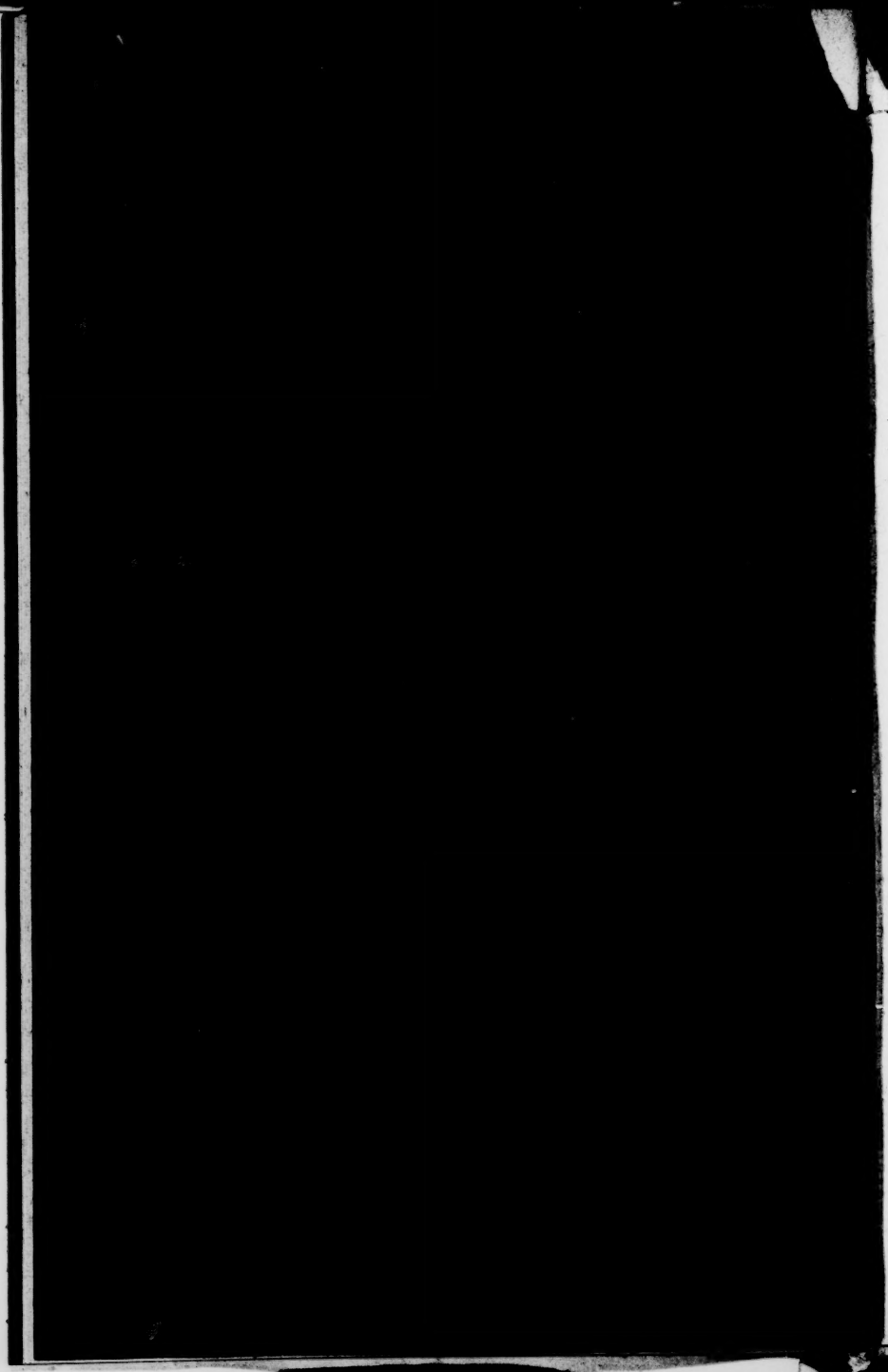
No. 158.

JOHN M. MENDENHALL, APPELLANT,

vs.

CLARK N. HALL.

JOHN F. LUDELING, Counsel for Mrs. E. Hall, Administratrix.



Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 158.

JOHN M. MENDENHALL, APPELLANT,

vs.

CLARK N. HALL.

The undersigned counsel for Mrs. Susie Hall, widow and administratrix of Charles F. Hall, appearing solely for the purpose of pleading to the jurisdiction of this Court as to the case against Charles F. Hall, represents that there has been no appeal asked for from the judgment in favor of Charles F. Hall, dismissing plaintiff's bill as to him. There has been no order granted for an appeal from that judgment; no bond of appeal in favor of the defendant Charles F. Hall has been executed; and no citation of appeal has been issued to Charles F. Hall, or served on Charles F. Hall, or his representative.

There is no appeal pending against Charles F. Hall or his estate, and counsel therefore respectfully declines to make Mrs. Susie Hall, the administratrix, a party to the appeal.

The Record shows that Charles F. Hall filed a demurrer and plea to the bill. The plea sets forth that the Constitution of Louisiana, article 210, de-

clares tax titles *prima facie* valid, and required, as a condition precedent to any suit to set aside such sales, a tender of the price paid with ten per cent. per annum interest thereon to the purchaser. This was not done nor alleged to be done. R., p. 7.

On the 12th of May, 1885, the demurrer and plea filed by Chas. F. Hall was argued and the following order and decree was made:

J. H. Mendenhall

vs. No. 45.—In equity.

Clark N. Hall and Chas. F. Hall.

The demurrer filed herein on behalf of Chas. F. Hall is sustained. In this case, after argument by both parties, the law and the evidence being in favor of the defendant Chas. F. Hall, it is ordered, adjudged and decreed that his demurrer be allowed; and it is further ordered and decreed that his plea in this case be allowed, and that this bill, in so far as it relates to or affects Chas. Hall, be dismissed without prejudice and reserving to the plaintiff the right to file a new bill as to him.

Read and signed in open court this *12th day of May, 1885.*

Alex Boarman,
U. S. Judge.

Filed May 12th, 1885.

Record, pp. 11—33.

Nothing further was done in the circuit court in this case so far as Charles F. Hall is concerned. Pierce vs. Cox, 9 Wallace, 786. Plaintiff appears to have acquiesced in the judgment.

On the *14th of April, 1886*, more than a year after, the judgment was rendered against *Clark N. Hall*, on promissory notes, without a jury. R. p. 39.

On the 30th April, 1886, on motion in open court, an order for an appeal from *that* judgment was granted. R., p. 40; 99 U. S., 213. Vansant vs. Gaslight Co.

On the *9th day of September, 1886*, long after the adjournment of the court at which the order was made, a bond was executed in favor of "the defendants herein" etc., without naming any one. Record, p. 40.

On the *7th day of September, 1886*, a citation of appeal was issued, addressed to *Clark N. Hall* alone—which was served on the 5th of October, 1886. R., p. 41.

The bond evidently was given with reference to the party mentioned in the citation *dated two days before the execution of the bond.*

It is manifest that no appeal has been taken from the judgment in favor of Clark F. Hall, dismissing plaintiff's bill, and that said judgment is *res judicata*, and that no judgment can be rendered by this Court affecting the property or rights of the representatives of Charles F. Hall deceased.

Respectfully submitted,

JOHN T. LUDELING,

Counsel for Mrs. S. Hall, Administratrix.